

Housing & Property Services

# Tenancy Policy

2022



**North Kesteven**  
DISTRICT COUNCIL

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# 1. Scope of the Policy

## 1.1.Scope

- 1.1.1. Managing tenancies is a core function of any landlord.
- 1.1.2. This Policy sets out North Kesteven District Council's approach to tenancies, including:
  - What tenancies will be used by the Council, and under what circumstances
  - How tenancies will be sustained
  - The use of non-statutory succession
  - The Council's approach to tenancy fraud
  - The promotion of social housing mobility and access to opportunity
  - The circumstances in which any tenancy agreement provided by the Council will end due to possession action, (including evictions) and the associated activities and responsibilities involved
- 1.1.3. The Tenancy Policy works in close conjunction with other Council policies, most significantly the Allocations and Income Management Policies. Taken as a whole, they define the Council's approach, as a landlord, through the entire life of a tenancy.
- 1.1.4. This policy recognises that the Council's role as a landlord may conflict with its statutory homelessness duties. It therefore sets out the processes that will be undertaken before an eviction is carried out to ensure that all possible alternative remedies are examined. An eviction is defined as the recovery of accommodation, owned or managed by the Council, by using the legal processes that are available.
- 1.1.5. The Council seeks to ensure that this Policy does not discriminate between tenants on any grounds. Publishing standard information and documentation in different languages and other formats, as required, will enhance the promotion of equal opportunities.

## 2. Policy Requirements & Context

### 2.1. Local Context

2.1.1. The Council has established the following vision, purpose, priorities, ambitions and values guiding everything the Council does and how it does it:

Vision	A District of Flourishing Communities
Purpose	A prosperous, sustainable district delivered through effective and efficient public services that meet local priorities, the challenges of climate change and the recovery from the economic and social impacts of Covid-19
Priorities	<p>Our Communities – To enhance the wellbeing, safety and health of all our communities; inspiring and supporting a sustainable and flourishing future</p> <p>Our Environment – To meet the challenge of climate change, ensuring integration and delivery of the Climate Action Plan across all NK Plan Priorities</p> <p>Our Economy – To enable all of our communities to flourish as part of the recovery from Covid-19 as well as opportunities from the Green economy</p> <p>Our Homes – To deliver sustainable housing growth, and pursue energy efficient development to meet the current and emerging needs of all our communities</p> <p>Our Council – To aspire to be a high-performing, value for money Council that is agile and embraces the challenges and opportunities of the future</p>
Key Ambitions	<p>Promote participation and engagement within our communities as well as recovery from the impacts of Covid-19</p> <p>Champion greenhouse gas reduction both within the Council and across the district</p> <p>Support business recovery in the district; the protection of existing jobs and the creation of new jobs</p> <p>Facilitate the provision of community infrastructure to align with housing growth</p> <p>Deliver high quality, value-for-money service</p>
Values	<p>High Performing</p> <p>Honesty</p> <p>People Focused</p> <p>Professionalism</p> <p>Teamwork</p>

- 2.1.2. The Housing Revenue Account Business Plan confirms the priorities of the Council in respect of the management of the housing stock. The Tenancy Policy will be consistent with these values and priorities.
- 2.1.3. From 2013, in its role as the strategic housing authority, the Council has also been required to publish a Tenancy Strategy. This Tenancy Policy will be consistent with the Tenancy Strategy.
- 2.1.4. The Council owns or manages 3896 residential properties (figures as of July 2022). The demand for housing in the district is high, and this is reflected in high property prices compared to average wage. The supply of affordable rented homes is limited and it is important that the stock that is available is used to its full potential to provide homes for those in housing need.
- 2.1.5. The Council is a developing authority and, as such, will look at using affordable rents in the context of new build properties developed with grant funding from Homes England. The Affordable Rent level will be no more than 80% of the local market rent.
- 2.1.6. An Affordable Rent level will also be used where properties are managed under an Empty Properties Dwelling Order (EDMO).

## **2.2. National Context**

- 2.2.1.** The Tenancy Policy will meet the requirements of the Regulator of Social Housing which can be summarised in the following way:
  - Registered providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.
  - They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements
  - They shall develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions
  - They will make sure that the home continues to be occupied by the tenant they let the home to for the duration of the tenancy period allowing for regulatory requirements about participation in mutual exchange schemes.
- 2.2.2. The Council will also ensure the Tenancy Policy fulfils all statutory requirements, including:
  - The requirements of all relevant housing legislation, including the Housing Act 1985, the Housing Act 2004 and the Localism Act 2011;
  - The implications of the Human Rights Act 1998 to ensure no potential breach of the Act occurs; and
  - Ensuring that in every individual case the decision-making is carried out in accordance with the law.

## 3. Specific Policy Objectives & Principles

### 3.1.Objectives

- 3.1.1. The overarching objective of the tenancy policy is to ensure that the Council's housing stock is used as effectively as possible to provide homes for those in housing need who are unable to secure a home for themselves in the private sector. The Policy will make the best use of available housing; be compatible with the purpose of the housing; and contribute to the Council's strategic housing function and corporate priorities.
- 3.1.2. The Tenancy Policy meets all legislative and good practice requirements. The main objectives of the policy are to set out:
- The type of tenancies that will be granted, and in what circumstances;
  - How tenancies will be managed;
  - Where introductory tenancies are granted, the length of the probationary period;
  - Any exceptional circumstances where a probationary period may be extended;
  - The circumstances in which the Council may commence legal action to enforce tenancies -
    - to prevent homelessness occurring by exhausting all other management remedies, where appropriate;
    - to provide early intervention in an attempt to prevent eviction occurring;
    - to define the authorisation process for legal enforcement and to deal with evictions in a consistent way;
    - to protect the wellbeing and interests of occupiers and other residents in the community; and
    - where necessary, to take appropriate action to protect the assets and income of the Council.
  - How the Council ensures the mobility of existing tenants
  - The way in which a tenant or prospective tenant may appeal
  - How the Council will take into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
  - The Council's policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.

### 3.2.Principles

- 3.2.1. The Council will clearly explain to tenants the specific actions they must take at each stage.
- 3.2.2. The housing service will actively promote joint working with other Council departments and external agencies.
- 3.2.3. All procedures and agreed practices will be implemented consistently across the service.
- 3.2.4. Training will be provided to ensure all staff are fully equipped to carry out the roles expected of them.
- 3.2.5. All communication will be in plain language and will make clear who the appropriate officers are to provide advice and assistance.

## 4. Granting of Tenancies

### 4.1. Tenancy Types

4.1.1. The Council will use the following tenancy types:

- Introductory
- Secure
- Non-Secure
- Assured Shorthold
- Demoted

### 4.2. Tenancy Offer

4.2.1. The Council will grant the appropriate tenancy type, taking into account the circumstances of the applicant as well as the ownership and type of property.

4.2.2. The following shows the Council's approach to new tenancies allocated through our Choice Based Lettings system to properties owned by the Council:

Circumstances	Tenancy Type
Currently holds a Secure / Assured Tenancy, issued <u>before</u> April 2012.	Secure
All other tenures (including Secure/Assured tenancies issued April 2012 <u>onwards</u> ).*	Introductory, leading to secure

\* If tenancy was obtained through mutual exchange, use date of original tenancy.

4.2.3. For allocations made to properties that are subject to an Empty Dwellings Management Order, and are therefore not owned by the Council, prospective tenants will be offered an Assured Shorthold Tenancy.

4.2.4. For allocations made under the Council's duty to provide interim accommodation, and the property is a single dwelling (non-HMO), prospective tenants will be offered a Non-Secure Tenancy.

4.2.5. For allocations made under the Council's duty or power to provide interim accommodation, and the accommodation is within a House of Multiple Occupancy, prospective tenants will be offered the accommodation under a License to Occupy, the management of which sits outside the scope of the Tenancy Policy.



## 5. Tenancy Management

### 5.1. Introductory Tenancies

- 5.1.1. Introductory tenancies are designed to help manage anti-social behaviour and other serious tenancy breaches by making it easier for landlords to evict those tenants who persistently engage in neighbour nuisance before they achieve security of tenure.
- 5.1.2. In less serious cases, or ones which are still being investigated, the Council has the option of serving a notice to extend the trial period for a further 6 months.
- 5.1.3. It is envisaged that in most cases an introductory tenancy will become a secure tenancy at the end of the 12-month period.
- 5.1.4. The eviction process for an introductory tenant is different from that of a secure tenant in that no grounds for possession have to be proved to the court; but a tenant will have the right to a review by NKDC of any decision to evict (or serve an extension notice).
- 5.1.5. Under the Housing Act 1996 Section 136 (2), landlords operating Introductory Tenancies have a duty to publish up-to-date information about Introductory Tenancies, which explain:
  - The terms of an Introductory Tenancy
  - The provisions of the Housing Act 1996 relating to Introductory Tenancies, including rights and procedures
  - The landlord's obligations under Sections 11 to 16 of the Landlord and Tenant Act 1985.These will be published on the Council's website.
- 5.1.6. Introductory tenants have fewer legal rights as Secure tenants.
- 5.1.7. Introductory tenants will receive visits from Council Officers at 6, 24 and 36 weeks of their tenancy.
- 5.1.8. If a Notice of Possession Proceedings (NOPP) has not been served by week 39 or a Notice of Extension has not been served by week 43, the Introductory Tenancy becomes a Secure Tenancy.
- 5.1.9. The Council's procedure for reviewing the service of a NOPP or Notice of Extension will be in line with the regulations set out in the Housing Act 1996.

### 5.2. Transfers & Mutual Exchanges

- 5.2.1. The Council advocates strongly on the mobility of social housing tenants, especially to give or receive support, to obtain employment, or to relieve financial pressures. Officers should promote mutual exchanges and transfers as a positive way of meeting housing need and making best use of the housing stock.
- 5.2.2. All applications to transfer will be subject to the Council's Lincs Homefinder Lettings Policy.
- 5.2.3. All tenants are eligible for a full and comprehensive Housing Options Interview, which provides individual information and advice on alternative accommodation available and assistance to access it.
- 5.2.4. The Council subscribes to a web-based exchange service and will continue to subscribe to the most appropriate service, with regard to the needs of the Council's tenants. Where needed, tenants will be provided with advice and assistance in using

such web-based services.

- 5.2.5. Existing Council tenants will retain similar security of tenure as that of their original tenancy, either by assignment or the granting of new tenancies.
- 5.2.6. Tenants of other housing providers who exchange with a Council tenant will retain a similar security of tenure as that of their original tenancy, either by assignment or the granting of new tenancies.
- 5.2.7. In considering the grounds for refusal of mutual exchanges, Officers will seek to allow exchanges wherever possible and make sure any refusal is based on careful consideration of all relevant factors and the best use of housing stock.
- 5.2.8. Mutual exchanges will only be refused using one or more of the grounds as set out in Section 2 of the Housing Act 1985.
- 5.2.9. A tenant or prospective tenant may request a review of the Council's decision about:
  - The refusal of a mutual exchange;
  - the length of fixed term tenancy offered;
  - the type of tenancy offered; and/or
  - a decision not to grant another tenancy on the expiry of the fixed term
- 5.2.10. Reviews will be undertaken by the Neighbourhood Services Manager
- 5.2.11. If the tenant or occupier is unhappy with the outcome of the review, they may make an appeal to the Appeal Panel. Details are available on request.
- 5.2.12. The tenant should also be advised of the Council's Complaints procedures, which is available to any applicant who is not satisfied with the way in which their case has been dealt with. Details of the Complaints Procedure can be obtained from any Council Officer.

## 5.3. Succession

- 5.3.1. Secure Tenancies which commenced prior to introduction of the Localism Act 2011 (15 November 2011) hold a different statutory right of succession to those which commenced on or after this date.
- 5.3.2. For pre-Localism Act tenancies there is a statutory right of succession for:
  - Joint tenants
  - A sole tenant's spouse or civil partner (or those living with the tenant as a spouse or civil partner)
  - A family member such as the tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece, who has been a member of the household for the twelve months preceding the tenant's death.
- 5.3.3. For tenancies granted after 15 November 2011, the Localism Act 2011 removed the statutory right of succession for family members.
- 5.3.4. The Council will allow a contractual succession right for the tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece where they have lived as a member of the tenant's household for the twelve months preceding the tenant's death.
- 5.3.5. The Council will not allow a succession where the deceased tenant was themselves a successor.
- 5.3.6. The Council will not allow a succession where the tenant holds a Non-Secure or Assured Shorthold Tenancy.

- 5.3.7. Where a family member (as defined above) succeeds, the Council will recover possession of the property if:
- The successor is under-occupying the property, considering their housing need at the date of death of the tenant compared to the property size; or
  - The successor and their household no longer require the type of property (e.g. where adaptations work has been undertaken to make the property suitable for someone with a specific physical disability).
  - A suitable property is made available to the successor tenant and their household.
- 5.3.8. Possession action will not commence until at least 6 months after the date of the original tenant's death.

## 5.4. Assignment

- 5.4.1. Section 91 of the Housing Act 1985 gives Secure tenants the right to pass their tenancy to another person in the following circumstances:
- By way of exchange
  - By Court order
  - To a person qualified to succeed upon the tenant's death.
- 5.4.2. Introductory tenants do not have the statutory right to assign their tenancy by way of exchange, nor will they be given any contractual right to do so.
- 5.4.3. Demoted tenants do not have the statutory right to assign their tenancy by way of exchange, nor will they be given any contractual right to do so.
- 5.4.4. The Council will not allow a non-secure or assured shorthold tenant to assign their tenancy.
- 5.4.5. Assignments will be executed by way of a Deed of Assignment unless a Court order has been made under the Family Law 1996.
- 5.4.6. A joint tenant will not be permitted to assign their tenancy without a Court order.
- 5.4.7. The Council will offer a right of review to any decision relating to assignment.

## 5.5. Lodgers and Subletting

- 5.5.1. In some circumstances, taking in a lodger or subletting offers the most appropriate solution to a problem. It can also help to meet local housing need and make better use of existing stock through reducing under-occupation.
- 5.5.2. A lodger is defined as someone with no exclusive access to any part of the property and will have (either a verbal or written) licence to occupy.
- 5.5.3. A subtenant is someone with exclusive access to, at least, part of the property and will have (either a verbal or written) tenancy agreement.
- 5.5.4. Only Secure tenants have the statutory right to take in a lodger or sublet part of the property.
- 5.5.5. The Council will not give contractual rights to any other tenancy type to take in a lodger or sublet part of the property.
- 5.5.6. The Council may give permission, based on individual circumstances, for other tenancy types to take in a lodger or sublet part of the property.
- 5.5.7. Secure tenants are advised to inform the Council of any lodgers.

- 5.5.8. Tenants must not take in a lodger or sublet part of the property where this will cause overcrowding. The Council may take enforcement action in these circumstances.
- 5.5.9. Tenants must request permission from the Council before subletting part of the property.
- 5.5.10. Permission to sublet part of the property will not be withheld unreasonably. When reviewing the decision to give consent, the Council will take into account:
- Whether the rent and deposit required of the sub-tenant is reasonable, taking account of any furnishings and facilities;
  - The length of time for subletting appropriate in the circumstances;
  - Whether subletting will create overcrowding;
  - Whether all parties are aware of their rights, obligations and responsibilities;
  - The sub-tenant understands there is no right to succession;
  - Whether the sub-tenant has a history of anti-social behaviour;
  - The tenant remains clear about their responsibility to maintain rent payments and for the conduct and behaviour of sub-tenants; and
  - If there are any current breaches of the tenancy.
- 5.5.11. Consent to sublet part of the property will not usually be given where a Notice of Seeking Possession has been served or a Possession Order has been obtained.
- 5.5.12. Where a tenant sublets the property as a whole, the tenancy ceases to be Secure.
- 5.5.13. Once security of tenure has been lost, it cannot be regained.
- 5.5.14. The Council will take enforcement action against any tenancy where the whole property has been sublet.

## 5.6. Tenant Improvements

- 5.6.1. An improvement is considered any alterations or addition which is intended to improve the property.
- 5.6.2. Only Secure tenants have the statutory right to make improvements to their property.
- 5.6.3. Introductory tenants will be given the contractual right to make improvements to their property.
- 5.6.4. No other tenancy types will be given the contractual right to make improvements to their property; however, the Council may give permission in certain circumstances.
- 5.6.5. Tenants must request and receive permission before completing an improvement.
- 5.6.6. Tenants will be required to reapply for permission if an improvement has not been completed within six months of the original permission being given.
- 5.6.7. The Council will not unreasonably withhold permission but may set conditions under which the improvement can take place.
- 5.6.8. Any improvement made that does not meet the conditions set will be deemed as if consent was not given and tenants may be requested to undo the improvement.
- 5.6.9. If permission is not given, the Council will set out the reasons for this in writing.
- 5.6.10. Permission may be refused where the Council feel the improvement would:
- adversely affect the safety of the premises or that of the neighbouring properties;
  - would reduce the value of the property; or
  - would occur the Council additional costs.
- 5.6.11. The Council may recharge the tenant for any additional costs occurred relating to an improvement.

## 5.7. Ending a Tenancy

- 5.7.1. A tenant wishing to end their tenancy can serve the Council a valid notice to quit giving at least four weeks' notice.
- 5.7.2. The death of the tenant(s) does not bring a tenancy to end; a notice to quit must be served by the executor of the tenants' estate.
- 5.7.3. All tenancies must end on a Sunday.
- 5.7.4. For a notice to quit to be valid it must set out the intention to end the tenancy and include:
  - the tenant's name;
  - the property address;
  - tenant's signature; and
  - the date.
- 5.7.5. For joint tenancies, a valid notice to quit can be signed by only one tenant.
- 5.7.6. The Council's Neighbourhood Services Manager can agree to reduce or waive the notice period under the following circumstances:
  - Tenant's individual circumstances denote a risk to themselves, neighbours and/or the Council should the tenancy continue;
  - Tenant is transferring within Council stock or has been nominated by the Council to another landlord;
  - Where vacant possession has already been given;
  - It is within the best interest of the Council; or
  - It makes best use of the Council's housing stock.
- 5.7.7. In the case of joint tenancies, both tenants must agree for the notice period to be reduced/waived.
- 5.7.8. Where security of tenure has been lost (i.e. the tenant is no longer using the property as their main or principal home), the Council can end the tenancy by the serving of a four week notice to quit.
- 5.7.9. In all other circumstances a warrant of possession must be executed for the Council to end a tenancy.

## 5.8. Unauthorised Occupiers

- 5.8.1. An unauthorised occupier is someone who had the permission to occupy by the tenant but remains in the property after the tenancy ends.
- 5.8.2. In most cases this will be a family member of a deceased tenant who does not have succession rights.
- 5.8.3. Where there is an unauthorised occupier, the Council will set up a 'Use and Occupation' account to charge the occupier mesne profits equal to the usual rental charge.
- 5.8.4. The Council will not commence possession proceedings where the occupier is:
  - actively working with the Council to find alternative accommodation;
  - paying the mesne profits;
  - keeping the property in good condition; and
  - not behaving in a way which causes or is likely to cause nuisance and/or annoyance to others within the locality of the property.

## 6. Enforcement

### 6.1. Legal Framework

- 6.1.1. The Council will ensure that this section meets all legislative and good practice requirements and minimises evictions being carried out.
- 6.1.2. This will include, but is not restricted to, the Housing Acts 1985 and 1996 (and subsequent legislation), the Localism Act 2011, the Pre-Court Protocol and the Chartered Institute of Housing's Housing Manual.
- 6.1.3. The Council will ensure that tenants have a fair hearing and will have respect for their private and family life, the home and correspondence in accordance with the Human Rights Act 1998 (in particular, Articles 6 (fair trial); 8 (respect for family life); and 14 (the prohibition of discrimination)).
- 6.1.4. Consideration is also given to the responsibility of the Council in promoting and assisting in the building of sustainable and balanced communities.
- 6.1.5. the Council will ensure that no personal data relating to legal action is passed to a third party in breach of the Data Protection Act 2018 and the UK General Data Protection Regulation without the explicit consent of the tenant(s). This will include information given to other occupiers of the property and elected members.
- 6.1.6. The decision to grant a possession order and then a warrant of execution (eviction) can only be made by the County Court, not the Council under the grounds for listed within the relevant Housing Act.
- 6.1.7. Possession will only be granted when the court is satisfied that it is reasonable to do so and that the Council has adhered to the prescribed legal process including serving a valid notice on the tenant and all qualifying occupiers.

### 6.2. Tenants' Responsibilities

- 6.2.1. Tenants are responsible for adhering to the conditions set within their tenancy agreement.
- 6.2.2. If two or more people have signed a tenancy agreement they are jointly and severally liable.
- 6.2.3. This includes ensuring the actions and behaviour of those living in or visiting their property is acceptable.
- 6.2.4. Failure to adhere to any of the conditions within the tenancy agreement made lead, after other management options have been exhausted, to possession action being taken by the Council.
- 6.2.5. Tenants have an obligation under the terms and conditions of their tenancy agreement to pay rent due every week on or before the first day of each rental period.
- 6.2.6. Tenants have a responsibility to ensure that the property is not used for illegal activities.
- 6.2.7. Tenants have a responsibility to ensure that they, and the people living with them, or visiting them, do not cause harassment and/or nuisance, annoyance or disturbance is to any other person in the locality.



## 6.3.Council's Responsibilities

- 6.3.1. The Council has a duty to protect its interests, including its rental income. Enforcing the terms of the tenancy agreement will assist this.
- 6.3.2. The Council has a duty to all tenants and the wider community to ensure that they are able to live in an environment that is attractive, well maintained and safe and secure.
- 6.3.3. To ensure this duty is fulfilled, the Council will take appropriate enforcement actions against tenants when those living in or visiting the property behave in a manner which threatens to disrupt the neighbourhood and put the safety and security of other tenants and residents at risk.
- 6.3.4. At the start of a tenancy, the Council will make every effort to ensure that tenants are informed of all the responsibilities and activities associated with maintaining a tenancy.
- 6.3.5. Tenants will be encouraged to take appropriate action at the earliest opportunity to prevent placing their tenancy at risk.
- 6.3.6. Tenants will be advised of the consequences of failing to adhere to the tenancy agreement. This will include any action that may be taken by the Council to remedy a situation.
- 6.3.7. Where appropriate, tenants will be offered the support and assistance of a Tenancy Sustainment Officer to ensure their tenancy is maintained successfully.
- 6.3.8. Any enforcement action taken will be proportionate to the breach of tenancy conditions, clearly state what action the tenant must take to resolve the issue and use an escalation process to advance action where the issues continue.
- 6.3.9. The Council will ensure that it follows the correct legal procedure when taking possession action.
- 6.3.10. This will include serving tenants and qualifying occupiers with a Notice of Non Renewal, Notice of Possession Proceedings, Notice of Seeking Possession, or a Notice To Quit.
- 6.3.11. Officers are expected to keep accurate file notes and to be aware they could be used as evidence in Court.
- 6.3.12. The Council will write to tenants when serving them with a Notice to advise them of the reason for the Notice, the process involved, and the legal requirement placed on the Council to serve the appropriate Notice.
- 6.3.13. In exceptional circumstances, possession proceedings can begin immediately i.e. as soon as the Notice is served. This will be confirmed to the tenant, in writing.
- 6.3.14. Possession action will only be used as a last resort and only after all other management remedies prove ineffective.
- 6.3.15. The Council will attempt to provide tenants and any occupiers who are due to be evicted with information of the homelessness responsibilities the Council has towards them.
- 6.3.16. This information, along with any advice and/or assistance, will be provided by the Council's Housing Options team.

## **6.4.Preventative Action**

- 6.4.1. The Council will ensure that all reasonable steps will be taken to remove the need for court action to recover possession of a property. This will include early regular and sustained intervention to avoid the escalation of a situation.
- 6.4.2. The Council will follow an escalation policy based on preventative measures and incremental enforcement actions that are proportionate to the level of the situation.
- 6.4.3. In some cases, where the breach of tenancy is of a serious nature, the Council may decide that immediate legal action is required and commence the recovery of a property with the serving of a Notice.
- 6.4.4. The Council's Housing Options team will be notified whenever a Notice is served.
- 6.4.5. Where there is a risk of abuse, violence and/or danger to neighbours, colleagues or the person who is being evicted, the Council will act quickly and appropriately to ensure the risk is minimised.

## **6.5.Assessment, Support & Liaison with Other Agencies**

- 6.5.1. The Council will undertake a risk assessment for all tenants when it is identified that their tenancy is at risk.
- 6.5.2. Where appropriate, tenants will be offered the services of a Tenancy Sustainment Officer to support them to maintain their tenancy.
- 6.5.3. All tenants at risk of losing their tenancy will be encouraged to obtain advice from a solicitor, a housing advice centre or citizens advice.
- 6.5.4. Where an external agency or Council service is providing support, full co-operation will be given by the Housing service to try to resolve a situation without the need for legal action.
- 6.5.5. However, the Housing Service retains the right to proceed with possession action where there are overwhelming housing management issues e.g. chronic anti-social behaviour with a high likelihood of repetition.
- 6.5.6. The Council's Housing Options team will be notified of all eviction dates.
- 6.5.7. Where the tenant's household includes dependent children, Lincolnshire County Council's Children Services department will be notified.

## **6.6.Authorisation for Legal Action**

- 6.6.1. It is impossible to consider all possible circumstances where legal action becomes appropriate. Equally, it is appropriate for there to be internal checks and balances on the Council resorting to legal action in respect of a tenancy. Accordingly, officers must use their judgement within a framework.
- 6.6.2. Generally, possession action should be considered in the following circumstances and where there is no alternative action:
  - where an Unauthorised Occupier fails to seek alternative accommodation and/or fails to make mesne profits payments.
  - where it is evidenced that a tenant is no longer using the property as their main or principal home;
  - where there are rent arrears in excess of the equivalent of ten week's rent and no effective agreement;



- where there are long-standing rent arrears and a history of broken agreements to repay;
  - where there is a significant breach of tenancy and appropriate time and advice/support has been given for it to be rectified;
  - where there are a number of less significant breaches of tenancy and appropriate time and advice/support has been given for them to be rectified;
  - where there is evidence of significant neighbour nuisance and appropriate time and advice/support has been given for this to be rectified;
  - where there is a criminal conviction related to the use of the property (e.g. possession of illegal drugs found at the property) or in its locality;
  - where there is evidence of serious ASB in the locality of the property.
  - where a Closure Order against a property has been awarded; and
  - where a tenant has been convicted of breaching a Criminal Behaviour Order;
- 6.6.3. Where a tenancy breach is due to anti-social behaviour, the Council will also consider legal action to demote a Secure tenancy.
- 6.6.4. The tenant's personal circumstances, including vulnerability and communication difficulties, must be considered in all cases, at all stages of the process.
- 6.6.5. Formal legal action against a tenant is always initiated by the service of a notice, either a Notice of Seeking Possession, Notice of Possession Proceedings, Notice of Demotion or Notice To Quit.
- 6.6.6. The Housing Officer is responsible for the preparation of the notice, the service of which must be authorised by the Neighbourhood Services Manager or Income Team Leader.
- 6.6.7. Except in exceptionally serious circumstances, the Council considers the service of the notice as an opportunity for the tenant to understand the consequences of continuing tenancy breaches and a clear opportunity to rectify those breaches.
- 6.6.8. The decision to make an application to Court must be authorised by the Neighbourhood Services Manager or Income Team Leader.
- 6.6.9. The decision to make an application for a warrant or writ of possession must be authorised by the Housing Services Manager.
- 6.6.10. In deciding to make an application to Court, the following must be considered in all cases:
- that all relevant regulatory guidance has been taken into account;
  - that NKDC's own policies and procedures have been followed;
  - that the pre-action protocol for possession claims based on rent arrears has been followed;
  - that alternative solutions and interventions have been considered and/or exhausted;
  - that the requirements of the Disability Discrimination Act have been met; and
  - that adequate support has been provided for vulnerable tenants.
- 6.6.11. Where a tenant has made no attempt to improve or rectify their tenancy breach following an application to Court, the Council will seek an outright possession order.
- 6.6.12. Where a tenant has made significant efforts to improve or rectify their tenancy breach following an application to Court, the Council will seek a suspended possession order and, in cases involving anti-social behaviour, a demoted tenancy order.
- 6.6.13. The Council has the right to recover the tenancy on or after the date specified on the outright order.

- 6.6.14. After this date, if the tenant has not given up possession of the property, the Council will consider applying for a warrant or writ of possession to evict the tenant.
- 6.6.15. If a suspended possession order has been awarded and the tenant continues to breach their tenancy, the Council will consider applying for a warrant or writ of possession to evict the tenant.
- 6.6.16. In deciding to apply for an eviction, the following must be taken into account:
- where an outright order has been obtained;
  - where there is clear evidence of continued tenancy breaches, significant either in frequency or impact;
  - where opportunity has been given to remedy the breach(es), but they have not been resolved;
  - in rent arrears cases, where the tenant is more than ten weeks behind the suspended possession order and has been given opportunity to catch up, or where the tenant is repeatedly failing to make payments as ordered by the Court;
  - where there is clear evidence of risk to the community, or to Council Officers or contractors.
- 6.6.17. If an outright order is granted for rent arrears, and full payment of the rent arrears and Court costs is made prior to the date specified, the Council will not apply for a warrant of possession.
- 6.6.18. If a warrant of possession has been applied or awarded for rent arrears, and full payment of the rent arrears and Court costs is made prior to the date of the eviction, the Council may agree to withdraw the application.
- 6.6.19. This is at the discretion of the Housing Services Manager, considering previous conduct, any vulnerability and any other relevant tenancy concerns. Tenants will be fully advised of this.

## 6.7.Undertaking an Eviction

- 6.7.1. An eviction cannot be carried out unless the County Court has granted an order for possession and a warrant or writ of possession has been issued.
- 6.7.2. The Council will arrange hand deliver of a letter to a tenant to advise them of their date of eviction.
- 6.7.3. The Council will attempt to make contact with a tenant to give advice, including the role of the Court and how to make an application to suspend a Warrant.
- 6.7.4. Where there are other occupiers of the property (e.g. a lodger), Officers must be careful not to breach Data Protection requirements.
- 6.7.5. A County Court Bailiff or High Court Enforcement Officer will carry out an eviction, not Council employees.
- 6.7.6. A risk assessment must be completed prior to the eviction date to ensure the safety of all staff and contractors in attendance.
- 6.7.7. At least two Council officers must be present at an eviction.
- 6.7.8. Evictions will be carried out following legal guidelines and in accordance with good practice.
- 6.7.9. Locks will be changed after each eviction and a detailed void inspection of the property, garden and any outbuildings made.
- 6.7.10. A Council officer will take photos and complete an inventory of any items belonging to the tenant that remain in the property.

- 6.7.11. A robust, risk-based approach will be taken where belongings are left behind by the tenant. This may involve storage of items of value for a reasonable period before disposal.
- 6.7.12. All tenants evicted will be recharged for the expenses incurred by the Council during and after the eviction. This will include legal expenses, the cost of any chargeable repairs, removal costs and storage fees.
- 6.7.13. Tenants who have been evicted will remain liable for all debts they have with the Council after their eviction takes place.



**North Kesteven**  
DISTRICT COUNCIL

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