



Succession Policy

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Succession Policy Quality Record

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1. Introduction

- 1.1 When a Council tenant dies it may be possible for the spouse, civil partner, or certain other family members to take over the tenancy – this is known as succession. The rights to succeed to a secure tenancy are set out in the Housing Act 1985.
- 1.2 This Policy sets out Nuneaton and Bedworth Borough Council's position regarding the rights of a spouse, civil partner, or other family members to take over a tenancy following the death of a tenant.
- 1.3 The Policy will outline the process of how the Council will deal with requests for succession and will also outline the criteria in which an applicant will succeed to a tenancy.

2. Purpose

- 2.1 The purpose of this policy is to:
 - ensure the succession and assignment of council owned properties complies with legislation, statutory guidance, and good practice
 - treat all applicants for housing fairly, whilst being sensitive to their particular circumstances.
 - make the best use of housing stock
 - provide high quality services which are clear and understandable to those who use them and help applicants/tenants understand the operation of the Succession Policy.

3. Scope

- 3.1 This policy applies to tenants that hold an introductory or secure tenancy with Nuneaton and Bedworth Borough Council.

4. Responsibility

- 4.1 The Assistant Director – Social Housing & Community Safety retains the overall responsibility for the implementation of this Policy
- 4.2 The Landlord Services Manager is responsible for the operational delivery of this policy and the associated procedures. This includes responsibility for monitoring and reviewing, staff awareness and training, policy development and communication to tenants.
- 4.3 Council staff should not feel under pressure and should always be careful not to confirm succession rights apply until checks of the tenancy agreement and file have been carried out. Occasionally it may also be helpful for legal advice to be taken.

5. Legislation & Guidance

- 5.1 Section 86A to 89 of the Housing Act 1985 sets out who may succeed to a secure tenancy as amended significantly by the Localism Act 2011. Succession to an introductory tenancy is set out in Sections 131 to 133 of the Housing Act 1996.

- 5.2 There can only be one succession to a secure tenancy, so if the deceased tenant was themselves a successor to the tenancy, there are no further succession rights in law. A person is treated as a successor in the circumstances set out in the Housing Act 1985 s 88 which are summarised below if:
- a) they took over the tenancy as the spouse or partner or family member qualified to succeed to the tenancy after the original tenant died
 - b) they were a joint tenant and took over the tenancy by surviving the other joint tenant when they died;
 - c) they became a tenant as a result of an assignment (not mutual exchange).
 - d) they become the tenant following a transfer of tenancy by the Family court where the previous tenant was a successor
 - e) they mutually exchanged to the property and they were a successor at the old address that they assigned
 - f) They were previously an introductory tenant and were a successor to the introductory tenancy
 - g) Within six months of the coming to an end of a periodic secure tenancy the tenant became a tenant under another secure tenancy which is a periodic tenancy, and (a) the tenant was a successor in relation to the former tenancy, and (b) under the other tenancy either the property or the Council, or both, are the same as under the former tenancy. The tenant is then also a successor in relation to the other tenancy unless the tenancy agreement provides otherwise.
- 5.3 For a spouse or partner to qualify to succeed to a tenancy he or she must have been occupying the property as his or her only or principal home as at the date of the tenant's death. It is appropriate for the Council to investigate and ask for evidence about the nature of the relationship if there is reason to believe the spouse or partner had moved out or the relationship had broken down before the tenant's death.
- 5.4 For a family member successor to qualify to succeed to a tenancy he or she must have been occupying the property as his or her only or principal home
- 5.5 An application by a person claiming they qualify to succeed to the tenancy must provide formal proof of residency at the property for 12 months. This evidence must cover the whole period of 12 months prior to the death of the tenant. Evidence which only covers a portion of the period of 12 months will not be sufficient. Proof may constitute benefit documentation, utility bills, council tax bills, entry on the electoral roll, address on driving licence, registration address with GP or children's schools, documentation submitted to the tax office, pay slips etc.
- 5.6 Upon either type of succession occurring, no new tenancy is created (as the existing tenancy is in effect taken over by the successor and as such the existing rent charge will continue to apply to the successor and arrears or credits also transfer to the successor)
- 5.7 There are no rights of succession apart from the normal inheritance of the tenancy for the remainder of the term in a Flexible Tenancy (section 90 Housing Act 1985). E.g. survivorship of the spouse, civil partner.
- 5.8 Where tenancy granted before 1 April 2012**
- 5.8.1 Where a secure or introductory tenancy has been granted before 1 April 2012, then a person will be qualified to succeed to the tenancy where they are either:
- the sole tenant's spouse or civil partner or a person living with the tenant as their spouse or civil partner; or
 - another member of the sole tenant's family and has resided with the tenant for twelve months ending with the tenant's death

5.8.2 Family members include parents, grandparents, children, grandchildren, brothers, sisters, aunts, uncles, nephews, nieces. Step and half relatives are treated as blood relatives.

5.9 Where the tenancy was granted after 1 April 2012

5.9.1 Where a secure tenancy has been granted after 1 April 2012, then a person will only be qualified to succeed to the tenancy where they are either the sole tenant's spouse or civil partner or a person living with the tenant as their spouse or civil partner.

5.9.2 If the secure tenancy began after 1 April 2012 there are no longer any statutory rights of succession for family members to succeed unless such a right is given in the Council's tenancy agreement (which it is not).

5.9.3 Where a Secure tenant dies and their spouse or civil partner lived at the property as their only or principal home as at the date of the tenant's death (whether or not a joint tenant), the tenancy automatically vests in the spouse on the date of the tenant's death, subject to them qualifying as above.

5.9.4 A person living with a tenant as husband or wife or a civil partner is treated as a spouse. Section 86A (5) of the Housing Act 1985 confirms. They do not need to have resided with the tenant for 12 months before the death.

5.9.5 Note that for introductory tenancies there is no change to their rights to succeed regardless of when the tenancy began. Both a spouse or partner and family member successor have a right to succeed if there is a person who qualified whether the tenancy began before or after 1 April 2012. This is because the legislative provision to change the position to bring introductory tenancies in line with secure tenancies has not yet been brought into force (s130A Housing Act 1996).

6. Where family members cannot agree who takes over the tenancy

6.1 In circumstances where there is more than one person who claims to qualify to succeed the tenancy and the parties cannot agree, the matter will be referred to the Head of Housing & Responsive Repairs for consideration. A spouse or partner always takes priority over a family member. If there are two competing family members, then the Head of Housing & Responsive Repairs chooses who should succeed as permitted by s89(2) Housing Act 1985.

6.2 If the accommodation is larger than is reasonably required by the family member successor (who is not the deceased tenant's spouse or partner), then the Council can seek possession under Ground 15A of Schedule 2, Part III of the Housing Act 1985. The Council will work with the successor to offer smaller, more suitable alternative accommodation. Every effort will be made to find smaller accommodation that is suitable for the successor. If other grounds for possession are available, then they may also be used at any time after a succession.

7. Operational principles

7.1 The Council will exercise the statutory right given to secure tenants under the Housing Act 1985, amended Localism Act 2011 to pass on their tenancy following their death.

- 7.2 Where possible, the Tenancy Services team will investigate and respond to an application for succession within 10 working days of a written application.
- 7.3 The successor succeeds to the tenancy. A succession cannot be refused because the property will be under-occupied. After the succession, however, the Council may ask a successor who is under-occupying if they would voluntarily like to move and make an offer of suitable alternative accommodation, which is smaller.
- 7.4 For a family member who is entitled to succeed but who will be under-occupying and does not voluntarily agree to move to a smaller property there is however a specific ground for possession that can be used after the succession has taken place. This is ground 15A. A Notice of Seeking Possession relying on Ground 15A can only be served in the 6 – 12 month window after the tenant died (not before 6 months' after the previous tenant has died, and not after 12 months since the previous tenant died). Suitable alternative accommodation must be offered when this ground is relied upon. Ground 15A is not available to a spouse or partner successor.
- 7.5 An application by a person qualified to succeed to the tenancy must provide formal proof of residency at the property. This must cover a period of 12 months prior to the death of the tenant. Formal proof may constitute benefit documentation, documentation submitted by the tax office, pay slips, medical documentation.
- 7.6 A successor will take on the original terms of the tenancy terms and obligations of the original tenancy agreement (including the payment of any rent arrears owed or the benefit of any rent credit).

8. Discretion

- 8.1 In exceptional circumstances where there is no legal right of succession, we may consider granting a new tenancy to a person remaining in a property after the tenant's death. Housing Officers should consider amendments to the Allocations Policy 2019. These cases should be referred to the Tenancy Services Manager for consideration and the person requesting the tenancy should be asked to register with NBBC Homes.

9. Appeals

- 9.1 Any person who is dissatisfied with a decision made concerning their application for succession should discuss the matter in the first instance with the Tenancy Services Manager. If they are still dissatisfied, then the complaint will be dealt with through the Council's complaints policy.

10. Review date

- 10.1 Every three years or on the introduction of new legislation, regulation, or good practice guidance.