

# Succession of Tenancy

## Introduction

A tenancy does not automatically end when the tenant dies. A tenancy is regarded as a property and can therefore be passed on to a family member through the process of succession.

For full provisions and definitions, please see s.87 & s.88 of the Housing Act 1985 (as amended).

The Barking and Dagenham Tenancy Conditions provide that succession to a tenancy will be dealt with in accordance with the law, it does not define exactly who may succeed.

In the circumstances, it is important to note that tenancies granted after 1<sup>st</sup> April 2012 now have different succession rights, which have been introduced by the Localism Act 2011. In the circumstances, consideration needs to be given as to when the tenancy started to determine who the potential successors to the tenancy could be.

If the tenancy commenced before 1<sup>st</sup> April 2012, upon the tenant's death the tenancy will pass to their spouse or civil partner, provided that he/she was occupying the Property as his/her only or principal home at the time of the tenant's death. If the tenant did not have a spouse or civil partner, the tenancy will pass to a member of their family who resided with them throughout the period of twelve months prior to their death.

If the tenancy commenced on or after 1<sup>st</sup> April 2012, upon the tenant's death the tenancy will pass to their spouse or civil partner, provided that he/she was occupying the Property as his/her only or principal home at the time of their death. A person who was living with the tenant as if they were a spouse or civil partner will be treated as such. No other person is legally entitled to succeed to the tenancy.

Consequently, the following factors must be taken into consideration when assessing whether or not the applicant is entitled to succeed.

1. If there is more than one person entitled to succeed, the spouse will be preferred, or in the case of two or more members of the tenant's family, if they cannot agree, it is up to the landlord to select the successor. Please use the following criteria:-
  1. Partner
  2. Son or Daughter
    - a) Length of occupancy and then, if necessary,
    - b) Age as a criteria.
  3. Brother or Sister
  4. Parents
  5. Grandparents/Grandchildren
  6. Uncle or Aunt or Nephew or Niece.

Where there is no person entitled to succeed, the secure tenancy comes to an end, although the tenancy still legally has to be ended by service of a Notice to Quit on a next of kin; or the Office of the Public Trustee, where there is no Will or next of kin (section 18 of the Law of Property (Miscellaneous Provisions) Act 1994).

## **2. Right to Succeed but property is under occupied**

Social housing is a scarce resource it is therefore important that wherever possible there is not significant under occupation of properties. Therefore, where a succession right has been accepted

but by doing so, the property will be under occupied, we will take steps to repossess the property and offer an alternative property to the successor. In such cases, a Notice of Seeking Possession will be served as required by law, at least 6 months after the Council is made aware of the tenant's death, but within 12 months. The Notice of Seeking Possession will specify Ground 15A, as well as any other Grounds, which may be relevant. Please see the Housing Act 1985 for appropriate grounds for seeking possession.

Given the extent of demand for larger and adapted or accessible homes, the Council may ask those other than partners who succeed to or are granted a tenancy to move to more suitable accommodation where:

- the home is larger than the Council's allocations scheme assesses their household needs; and/or
- the home is designed or adapted to be accessible to a disabled person and nobody in the household succeeding to or being granted a tenancy needs this sort of accommodation.

#### **Exceptions:**

The following exceptions will apply:

- The successor was the spouse of the tenant. This exception only applies if the underoccupation is not by more than one room and the property was not adapted for the deceased tenant.

### **3. Assignments**

The same principles, as described above, governing successions, apply to assignments in the same way except that the tenant wishing to pass on their tenancy remains alive. Decisions on such applications are therefore to be made according to the principles stated above.

As above, it is important to note the recent change in legislation and entitlement of those to succeed when considering assignments, particularly if the tenancy commenced after 1 April 2012.

### **4. No Right to Succeed - There Already Having Been One Succession**

The Housing Act 1985 only allows for one succession. This includes cases where the tenancy passed from husband to wife or vice versa even though they were joint tenants. Barking and Dagenham will however permit a second succession in cases where the first succession was between spouses who were joint tenants. This would be by way of a concessionary offer.

Please note that in these cases, the new tenant must be signed up as a successor so that there are no further successions to the tenancy.

Applications under this heading, are to be treated in the same way as succession applications and therefore the same criteria and conditions as set out above are to be applied. Concessionary offers would not normally be considered in circumstances where the person was under 18 as this would give rise to legal and H/B issues.

### **5. Concessionary Offers – where there is no first or second succession**

Where there is a person or family in occupation of a property upon the tenant's death and they do not possess a right to succeed nor do they meet the criteria for a second succession, a concessionary offer may still be considered in circumstances where it is in the council's best interests to do so. This decision would only be made in exceptional circumstances and in line with

meeting the council's duties in respect of crime and disorder, promoting health and wellbeing, making the best use of stock and/or where a homelessness duty may otherwise arise. The reason(s) for reaching this decision must be clearly stated. The decisions will be made by the Divisional Director of Housing Management through a delegated authority.

Concessionary offers would not normally be considered in circumstances where the person was under 18 as this would give rise to legal and H/B issues.

## **6. Decisions/Appeals**

For decisions and appeals, please see the Housing scheme of delegation.