Tenancy reform
- getting it right

CIH Housing Law Update

presentation by

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February 2014
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Tenancy Reform

What was it all about?

• July 2011 - Affordable Homes (HCA)
• Localism Act 2011
• January 2012 - Localism Act came into force - Tenancy Strategies due by January 2013
• April 2012 - revised regulatory framework - fixed term tenancies Housing Associations and Localism Act allowed Flexible tenancies
Other changes

- Reduced right of succession for LA tenants
- Changes to allocations
- Changes to homelessness
- Promotion of increase mobility choices
Flexible/Fixed Term Tenancies

- Housing Act 1985, s 107A – Localism Act 2011

- Regulatory Framework:
  “Registered Providers must grant general needs tenants a periodic secure or assured (excluding periodic assured shorthold) tenancy, or a tenancy for a minimum term of five years, or exceptionally a tenancy for a minimum fixed term of no less than two years, in addition to any probationary tenancy period.”
Tenancy Strategies

• Local Authority Tenancy Strategies - were due by 15 January 2013

• Must cover:
  • Kinds of tenancies
  • Circumstances
  • Length
  • When will grant further ones
Tenure Policies

• All Registered Providers must have tenure policies
• Must cover:
  • Types of tenancy
  • Circumstances
  • Length of fixed terms
  • Exceptional circs for terms less than 5 years
  • When further ones granted
  • Appeals/complaints, advice and assistance
  • Policy on vulnerable households
Rights to Challenge

- Housing Associations must have a complaints procedure covering length of fixed term tenancy offered and type
- Local Authority prospective flexible tenants have a right of review of length of tenancy which may be reviewed if the term does not accord with the landlord’s policy as to length of term
Sharing of Practice and experience

What have you done?

- Terms
- Types
- Exceptional circs
- Reviews and appeals, etc
What terms should go in?

Flexible:

• Fixed terms cannot be varied, save for changes relating to rent, etc unless tenant agrees – Ss 103(1) and 102(2)
• Add break clause in addition to S107C to give flexibility if tenant in arrears of in breach
• Include power for a joint tenant to terminate, even if the other doesn’t consent (NB NTQs don’t work on fixed terms)
What should go in?

- Include landlord break and forfeiture clause as issues over whether may need forfeiture notice
What should go in?

Fixed Term:

• A contractual rent increase provision as sec 13 doesn’t work on fixed terms
• Insert tenant break as no sec 107
• Allow joint tenant a right to terminate unilaterally
• Contractual right to terminate on all grounds that may be used – sec 7
• Include break and forfeiture clauses
What should go in?

Both:

- Include extended rights of succession if you wish
- Include break provision in the event of tenant death - right to terminate only applies if tenancy secure or assured at death
- Make sure that fixed service charges and other expenses are incorporated as rent
Ending Flexible tenancies

Housing Act 1985, ss 107D-107E

• Not less than 6 months’ written notice prior to expiry of term, that landlord does not propose to grant a further tenancy on the expiry of the flexible tenancy, with reasons and information of rights to review: s 107D(3)

• 21 days to request a review - is decision in accordance with policy: sec 107E(3)

• 2 months’ notice of possession: s 107D(5)

• Review must be completed prior to earliest date of proceedings specified in notice: s 107E(8)
Grounds for refusing possession

• Procedures not followed – Court has no jurisdiction;
• Procedures followed; but
• Eviction disproportionate or public law unlawful.
Possession during term

- Tenant can give 4 weeks’ notice
Possession during term

- Sec 107D(10) - same as periodic secure tenancy
- If security of tenure lost, cannot serve a Notice to Quit. Therefore, must be a forfeiture clause and covenant to occupy as main home
Fixed term – Termination on expiry

**Housing Act 1988, sec 21**

- Not less than 6 months’ notice in writing, together with info and advice: sec 21(1B)
- Tenant should have right of internal appeal
- 2 months’ notice: s 21(1)
- Query: Can landlord use sec 21(4)? - Tenancy Standard - Housing Association must give a 6 month notice before a fixed term ends
  - If not, must have provision in agreement entitling landlord to possession upon the expiry of the fixed term
Fixed term – Possession during term

• As with Assured - Notice Seeking Possession
• May only use Ground 2 or 7 and any ground in Part II except 9 or 16
• Tenancy agreement must have a provision allowing it to be ended on these grounds
• As with flexible, will need a forfeiture clause
Possession during term

• In order for tenant to terminate will require a break clause
Mutual Exchange

- Localism Act 2011 created a new procedure
- Applies to new tenancies granted after 01/04/12
Mutual Exchange

- Sec 158 Localism Act 2011
  - Pre-01/04/12 - tenant receives the tenancy rights of the person with whom exchanged tenancies
  - Post-01/04/12 - take existing tenancy rights with you
- Criteria for sec 158 to apply:
  - One tenancy is lifetime and the other is flexible or AST with fixed term of at least 2 years
  - Lifetime tenancy granted pre-01/04/12 and fixed term is at social rent
  - Exchange not caught by grounds for refusal - Sec 158 and Localism Act 2011, Schedule 14
Mutual Exchange

• S158 Localism Act 2011 - surrender and re-grant of tenancies where pre-01/04/12 secure or assured tenant exchanges with a fixed term tenant

• Exceptions – pre-01/04/12 secure or assured tenants exchanging with fixed term tenants on affordable or intermediate rent

• Change from Deeds of Assignment
Mutual Exchange

Grounds for refusal - Schedule 14, include:

• Rent arrears
• Breach of tenancy
• Possession order obtained or proceedings begun
• Under-occupation
Mutual Exchange

Tenants may need separate advice:
• Does this cause a change in secure of assured status?
• Is there a difference in rent level between social and affordable rents?
• Will they gain or lose a right to buy, etc?
## Mutual Exchange - Ready Reckoner

<table>
<thead>
<tr>
<th>Tenancy Type</th>
<th>Exchanging with</th>
<th>Type after</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secure tenancy (Pre 01/04/12)</td>
<td>Secure tenant</td>
<td>Take tenancy status of tenant with whom swap</td>
</tr>
<tr>
<td>Secure tenancy (Pre 01/04/12)</td>
<td>Housing Association Assured tenant</td>
<td>Take tenancy status of tenant with whom swap</td>
</tr>
<tr>
<td>Secure tenancy (Pre 01/04/12)</td>
<td>Flexible tenancy</td>
<td>Take status with you</td>
</tr>
<tr>
<td>Secure tenancy</td>
<td>Housing Association Assured Shorthold</td>
<td>Take status with you</td>
</tr>
<tr>
<td>AST – 2 years or more</td>
<td>Flexible tenancy</td>
<td>Not allowed</td>
</tr>
<tr>
<td>Flexible tenancy</td>
<td>Flexible tenancy</td>
<td>Take status with you</td>
</tr>
<tr>
<td>AST – 2 years or more</td>
<td>Assured (Pre - 01/04/12)</td>
<td>Take status with you</td>
</tr>
<tr>
<td>Tenancy Type</td>
<td>Tenancy Type</td>
<td>Permitted Status</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
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</tr>
<tr>
<td>AST – Less than 2 years</td>
<td>Any type of tenancy</td>
<td>Not allowed</td>
</tr>
<tr>
<td>Assured council or Assured Housing Association</td>
<td>Assured</td>
<td>Not allowed unless the tenancy agreement permits</td>
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