

SUCCESSION POLICY

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1 STATEMENT ON POLICY

- 1.1 Succession is the legal right of a qualifying person to take over the tenancy on the death of the current tenant. The City Council will allow one succession in the lifetime of a secure tenancy, as laid out in the Housing Act 1985. This Policy does not currently reflect the amendments in the Localism Act 2011, which allows for the right to succeed to be limited to married partners, cohabitees and civil partners.
- 1.2 Any secure successions that took place prior to 03/10/1980 are exempt from this ruling, and will not be counted.

2 KEY ISSUES FOR POLICY IMPLEMENTATION

- 2.1 Only one succession per tenancy is allowed. Therefore if a tenant is already a successor the tenancy cannot be passed on again.
- 2.2 Secure tenancies cannot be 'gifted' in a will.
- 2.3 With effect from 1 April 2012 a new ground for possession (15A) has been introduced into Schedule 2 to the Housing Act 1985 by Section 162 of the Localism Act 2011. A landlord wishing to use this ground against a successor must serve Notice of Seeking Possession or begin proceedings no sooner than six months after the death of the previous tenant and not later than 12 months after the death.

Succession rights for a person cohabiting with a secure tenant

- 2.4 For tenancies that started on or after 1 April 2012; the remaining tenant can inherit the tenancy as long as it was their home when the cohabitee died.

- 2.5 For tenancies that started before 1 April 2012; the remaining tenant can inherit the tenancy as long as it was their home at the time the cohabitee died and they were living together for at least 12 months before the secure tenant died.

Succession rights of relatives of a secure tenant

- 2.6 For tenancies that started on or after 1 April 2012; the remaining tenant can only inherit a relative's tenancy that started on or after 1 April 2012 if the tenancy agreement says this is allowed.
- 2.7 Tenancies that started before 1 April 2012; the remaining tenant can inherit a relative's tenancy that started before 1 April 2012 if:
- the tenancy was their home when the tenant died
 - the tenant did not have a spouse or civil partner who can inherit the tenancy
 - they were living with tenant for at least 12 months before they died. Time spent living elsewhere counts.

Relatives who can inherit a council tenancy

- 2.8 These include:
- parents or grandparents
 - child or grandchild
 - brother or sister
 - uncle, aunt, nephew or niece
- 2.9 Step-relations, half-relations and in-laws are also included, but not foster children.

Disputes about who can inherit the tenancy

- 2.10 The husband, wife or civil partner will always take priority over anyone else, unless it is a joint tenancy when the tenancy continues in the name of the other joint tenant.

- 2.11 If there is a choice between qualifying relatives, they can decide among themselves who inherits the tenancy. Two or more relatives cannot succeed together as joint tenants.
- 2.12 If they cannot agree, the Council will make the decision.

If an inherited home is too large

- 2.13 The Council will ask the successor to move (with the exception of a surviving spouse/civil partnership or joint tenancy) and provide suitable alternative accommodation, if the property is larger than is reasonably needed by the successor and their family. Eviction can only take place if the Council takes the successor to court and the judge agrees that it is reasonable to evict them under Grounds 15A, Schedule 2 of the Housing Act 1985.
- 2.14 The Council must give notice to leave between 6 and 12 months after the tenant's death or the date it became aware of the tenant's death if this is later.

Succession rights if the council tenancy is not a secure tenancy

- 2.15 The rights to inherit a flexible tenancy are the same as those for secure council tenancies that started on or after 1 April 2012.
- 2.16 The rights to inherit an introductory tenancy are the same as those for secure council tenancies that started before 1 April 2012.
- 2.17 Husbands, wives, civil partners, cohabitees and close family members can inherit a tenancy demoted for antisocial behaviour if they lived with the tenant for at least 12 months before they died.
- 2.18 There are no rights to inherit a family intervention tenancy or temporary accommodation granted after a homelessness application made by the person who died.

If you don't have the right to inherit the tenancy

- 2.19 The Council will ask any remaining occupant to leave following the tenant's death if the remaining occupant does not have the right to inherit the Council tenancy they are living in.
- 2.21 The Council will take action to evict the remaining occupant if they continue to live in the property after the death of the tenant and they do not have the right to do so.

Policy written: October 2018

To be reviewed by: September 2020

HOUSING ACT 1985

Section 83

NOTICE OF SEEKING POSSESSION

THIS NOTICE IS THE FIRST STEP TOWARDS REQUIRING YOU TO GIVE UP POSSESSION OF YOUR DWELLING.

YOU SHOULD READ IT VERY CAREFULLY

1. To: Name of Successor

If you need advice about this Notice, and what you should do about it, take it as quickly as possible to a Citizens' Advice Bureau, a Housing Aid Centre, or a Law Centre, or to a Solicitor. You may be able to receive Legal Aid but this will depend on your personal circumstances.

2. CAMBRIDGE CITY COUNCIL intends to apply to the Court for an order requiring you to give up possession of:-

Address

If you are a secure tenant under the Housing Act 1985, you can only be required to leave your dwelling if your landlord obtains an order for

possession from the Court. The order must be based on one of the Grounds which are set out in the 1985 Act (see paragraph 3 and 4 below).

If you are willing to give up possession without a Court Order, you should notify the person who signed this Notice as soon as possible and say when you would leave.

3. Possession will be sought on Ground 15A of Schedule 2 to the Housing Act 1985 which reads:-

GROUND 15A

The accommodation afforded by the dwelling-house is more extensive than is reasonably required by the tenant and—

(a)the tenancy vested in the tenant by virtue of section 89 (succession to periodic tenancy), the tenant being qualified to succeed by virtue of section 87(b) (members of family other than spouse), and .

(b)notice of the proceedings for possession was served under section 83 more than six months but less than twelve months after the date of the previous tenant's death. .

Whatever grounds for possession are set out in paragraph 3 of this notice the court may allow any of the other Grounds to be added at a later stage. If this is done, you will be told about it so you can argue at the

hearing in Court about the new Ground, as well as the Grounds set out in paragraph 3, if you want to.

4. Particulars of Ground 15A are as follows: -

The dwelling-house is in England, the accommodation afforded by it is more extensive than is reasonably required by the tenant and—

- (a) the tenancy vested in the tenant by virtue of section 89 (succession to periodic tenancy) or 90 (devolution of term certain) in a case where the tenant was not the previous tenant's spouse or civil partner, and
- (b) notice of the proceedings for possession was served under section 83 (or, where no such notice was served, the proceedings for possession were begun) more than six months but less than twelve months after the relevant date.

For this purpose “the relevant date” is:

- (a) the date of the previous tenant's death, or
- (b) if the court so directs, the date on which, in the opinion of the court, the landlord (or, in the case of joint landlords, any one of them) became aware of the previous tenant's death.

The matters to be taken into account by the court in determining whether it is reasonable to make an order on this ground include—

- (a) the age of the tenant,
- (b) the period (if any) during which the tenant has occupied the dwelling-house as the tenant's only or principal home, and
- (c) any financial or other support given by the tenant to the previous tenant.

Before the Court will grant an order on any of the Grounds 1 to 8 or 12 to 16 it must be satisfied that it is reasonable to require you to leave. This means that if one of these Grounds is set out in paragraph 3 of this Notice you will be able to argue at the hearing in Court that it is not reasonable that you should have to leave, even if you accept that the Ground applies.

Before the Court grants any order on any of the Grounds 9 to 16 it must be satisfied that there will be suitable alternative accommodation for you when you have to leave. This means that the Court will have to decide that, in its opinion, there will be other accommodation which is reasonably suitable for the needs of you and your family, taking into particular account various factors such as the nearness of your place of work, and the sort of housing that other people with similar needs are offered. Your new home will have to be let to you on another secure tenancy or a private tenancy under the Rent Act of a kind that will give you similar security.

THERE IS NO REQUIREMENT FOR SUITABLE ALTERNATIVE ACCOMMODATION WHERE GROUNDS 1 TO 8 APPLY

If your landlord is not a local authority, and the local authority gives a certificate that it will provide you with suitable accommodation, the Court has to accept the certificate.

One of the requirements of Ground 10A is that the landlord must have approval for the redevelopment scheme from the Secretary of State (or, in the case of a housing association landlord, the Housing Corporation). The landlord must have consulted all secure tenants affected by the proposed redevelopment scheme.

5. The Court proceedings for possession of the dwelling house can be begun immediately.

The date by which the tenant is to give up possession of the dwelling house is the date which is a minimum of 4 weeks from the first Monday following service of the Notice of Seeking Possession.

Court proceedings may be begun at once or at any time during the following twelve months. Once twelve months are up this Notice will lapse and a new notice must be served before possession can be sought.

Possession of your dwelling house cannot be obtained until after this date, which cannot be earlier than the date when your tenancy or licence could have been brought to an end.

This means that if you have a weekly or fortnightly tenancy, there should be at least four weeks between the date this notice is given and the date possession is ordered.

Signed.....

On behalf of CAMBRIDGE CITY COUNCIL

Address:- 44 St Andrews Street
CAMBRIDGE

Telephone No:- 457000 extension 8403

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Date..... 201

Notice under Section 83 of the Housing Act 1985 of which this is a true copy, served personally on

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Dated:201

Signed.....

TAKE NOTICE pursuant to the provisions of Section 48 of the Landlord and Tenant Act, 1987 the Council as your Landlord is obliged to inform you of the address at which notices (including notices in any court proceedings) may be served on it. Please take note that the appropriate address for service is:-

HOBSON HOUSE
44 ST ANDREW'S STREET

SCHEDULE 1

On (date) (title and name of successor) succeeded to the tenancy of the late (relation to original tenant) (name of original tenant) at (address of property) by virtue of Section 87(b) Housing Act 1985. The property is a..... bedroomed house / flat /maisonette which (name of successor) occupies by himself / herself and is therefore too large for (name of successor) needs. Given the high demand forbedroom properties it is unreasonable for (name of successor) to remain at (address of property). Cambridge City Council will make (name of successor) has made to (name of successor) a reasonable offer of suitable alternative accommodation more fitting to his needs as a single person. This notice of seeking possession was served under section 83) more than six months but less than twelve months from the date the succession took effect.