

# **CHARNWOOD BOROUGH COUNCIL'S DRAFT NEW TENANCY AGREEMENT**

## **WHAT'S NEW AND WHAT'S CHANGED?**

Our new draft tenancy agreement is a complete re-writing of the current conditions of tenancy and, as such, bears little resemblance to the existing agreement. It is difficult, therefore, to strike exact comparisons between the two. There are, however, some important differences. These are shown below.

### **1. In general**

While the existing tenancy agreement's many sections tend to be subject-based, the new tenancy agreement is divided into **nine** very clear and distinct sections focusing on landlord's and tenant's rights and obligations:

- Section 1: Explanation of words used in the agreement;
- Section 2: Tenancy details;
- Section 3: General terms;
- Section 4: Tenant's rights;
- Section 5: Landlord's obligations;
- Section 6: Tenant's obligations;
- Section 7: Ending the tenancy;
- Section 8: Chargeable services schedules;
- Section 9: Declarations and signings.

Within each section every paragraph is individually numbered so as to provide an easy method of referencing and cross-referencing.

### **2. Tenants' rights**

Tenants' rights fall into two broad categories: those conferred by acts of parliament such as the Housing Acts of 1985 and 1996 and those conferred contractually by Charnwood under the tenancy agreement. The draft new agreement makes very clear what rights are statutory and what are contractual. It also removes some 'rights' in the existing agreement that are either incorrect (right to assign) or inappropriate (right to join tenants groups). Rights not enjoyed by introductory tenants are made very clear by the use of bold red text.

### **3. Individual changes**

Other than those structural or formatting changes in the agreement, the new conditions of tenancy's changes fall into two broad categories themselves, viz:

- Additional clauses that do not have any equivalent in the existing agreement;
- Existing clauses re-written, clarified, expanded upon and/or strengthened.

The examples given below are not exhaustive: the comparison document accompanying this guide goes into great detail, cross-referencing the existing agreement's clauses with the new one's and *vice versa*.

(a) New clauses

- Section 2.7 **tenancy start date**: currently all tenancies start on a Monday and run on a weekly basis thereafter. The draft new tenancy agreement allows for tenancies to start on a day other than a Monday. This is intended both to give flexibility to incoming tenants in respect of their moving-in date but also to provide the opportunity for the landlord to reduce void re-let times;
- Section 5.5 **decoration**: this clause makes clear the landlord's obligation to decorate the exterior of tenants' homes and to make good internal decorations [tenant's responsibility] that are damaged in the course of any works or repairs carried out by the landlord;
- Section 5.8 **boundaries**: this clause sets out landlord's obligations in relation to boundaries and makes it very clear which boundaries the landlord will maintain;
- Section 6.1 **taking possession**: although one would argue that this is an implied term of tenancy, there is now an explicit clause requiring the tenant to take up possession of the property upon the start of the tenancy;
- Section 6.4.3 **anti-social behaviour**: the second bullet point in the list of conduct deemed to be anti-social behaviour refers to someone being present at a riot. The tenth bullet point states that drug misuse, such as smoking cannabis, that causes a nuisance to others is a breach of tenancy. This point is absent from the existing tenancy agreement. Mere drug consumption within

someone's home that does not cause a nuisance to others remains a criminal matter and not a breach of tenancy. The final bullet point in the list of activities considered to be anti-social behaviour is gang membership. This is a completely new category and makes it a breach of tenancy to belong to a gang or allow a gang member to visit the tenant's home;

- Section 6.8 **looking after your home**: bullet points 10 and 11 prohibit carrying out certain electrical works to the property. Bullet point 10 refers to works that need written consent; point 11 refers to works that are completely prohibited and where no permission will be granted in any circumstances;
- Section 6.11 **insurance**: this clause sets out clearly what the landlord's responsibilities are in respect of insurance – buildings and contents;
- Section 6.12 **health and safety**: this is a new, separate, clause and sets out clear obligations on the tenant on various subjects such as fire safety, responsibility for checking smoke detectors (including changing their batteries). The final bullet point in 6.12.3 is devoted to hoarding; and this is a completely new clause in the conditions of tenancy;
- Section 6.17 **household pests**: this new clause sets out very clearly what are landlord's and tenant's responsibilities in respect of infestations of household pests. The existing tenancy agreement is completely silent on this matter;
- Section 6.24 **owning or renting another property**: the new tenancy agreement introduces a clause on the landlord's position in respect of a tenant owning another property. A tenant must not own or rent another property in which the tenant would reasonably be expected to live in as his or her home. Similarly, the clause sets out the landlord's position if a tenant inherits a property.
- Section 8 **chargeable services**: the existing tenancy agreement is completely silent on what services could be chargeable if provided. The draft new tenancy agreement sets out a comprehensive schedule of all the types of services for which it would be legitimate to levy a service charge. Section 3.7 [General terms] sets out

the landlord's position in respect of how services will be charged and may be accounted for in the future;

(b) Clarification, expansion and re-writing of existing clauses

The clauses in the new tenancy agreement that falls into this category are too numerous to include without exception; the following are considered to be the most important, therefore:

- Section 4 **tenant's rights**: this section lists separately all secure and introductory tenants' statutory rights and contractual rights. It also is very clear through the use of bold red text which [statutory] rights are not available to introductory tenants;
- Section 4.5 **right of succession**: the existing tenancy agreement predates the Localism Act 2012. This changed and complicated succession rights significantly. The new agreement sets out in detail succession rights both for tenants whose tenancies began before 1 April 2012 and for those whose tenancies started on or after 1 April 2012;
- Section 6.4/5/6 **anti-social behaviour and harassment**: other than completely new additions to the list as described above, these clauses provide much greater detail and clarity over conduct deemed to be anti-social behaviour and strengthen the landlord's ability to tackle anti-social behaviour through this greater detail and clarity.
- Section 6.5 **harassment**: the new tenancy agreement separates out anti-social behaviour from harassment, the difference between the two being, in principle, that harassment is personally, deliberately and maliciously targeted, in particular to those people protected by the Equality Act 2010. While harassment is personally targeted, behaviour covered by this section is also contained in 6.4.3 where the behaviour is not personally targeted. Again this very much strengthens the landlord's powers under the tenancy agreement;
- Section 6.21 **assignment**: although assignment is covered in the existing tenancy agreement it is listed as a 'right' whereas it is not a right: it is a power that the landlord has to grant in certain circumstances. The new tenancy agreement corrects that inaccuracy;

- Section 6.22 **access obligations**: although the existing tenancy agreement is comprehensive in its position on the tenant requiring the landlord to give access, the new agreement is much more explicit and clear in setting out the consequences of failing to give access; it also makes it clear that failure to grant access as the result of a court order or for the landlord to carry out emergency works will result in forced entry;
- Section 6.7 **domestic violence**: while the existing tenancy agreement lists domestic violence as an example of anti-social behaviour generally, the new agreement devotes a separate section to the subject;
- Section 6.9 **tenant's responsibility for certain repairs**: this section expands considerably on those items in the existing tenancy agreement that are deemed to be the tenant's responsibility to keep in good repair;
- Section 6.10 **alterations and improvements**: again, this section expands considerably on its equivalent in the existing tenancy agreement;
- Section 6.15 **pets and other animals**: while there is reasonably comprehensive clauses in the existing tenancy agreement on the keeping of pets, the new tenancy agreement uses a new pets policy as the governing document on tenants keeping pets. This means that only fundamental details are required in the tenancy agreement and that policy changes to pet ownership can be changed without having to change the actual tenancy agreement;
- Section 6.18 **parking and vehicle repairs**: again, while the existing agreement is not silent over parking and vehicle repairs the new agreement strengthens and expands on existing terms.

#### 4. Conclusion

The new tenancy agreement is a substantial re-write of Charnwood council tenants' conditions of tenancy. It sets out much more clearly and logically tenants' and landlord's rights and obligations; it addresses deficiencies brought about by new legislation and it protects tenants' rights to quiet enjoyment of their homes by strengthening the landlord's ability to enforce conditions of tenancy against those who wilfully and/or persistently fail to abide by them.