

# Fixed term tenancy

## Policy

### 1.0. Policy Statement and Scope

Papworth Trust is committed to developing sustainable communities, facilitating the independence and providing equality and choice to our customers.

This policy sets out how this will be achieved through the implementation of a fixed term tenancy scheme.

The fixed term tenancy scheme will apply to new tenants within general needs and independent living (supported) accommodation.

The fixed term tenancy scheme will not apply to Tenants in supported or specialised supported housing or any accommodation which is time-limited, e.g. transition schemes.

Furthermore the scheme will not apply to the following:

- Papworth Trust tenants that already hold an assured tenancy; or
- New tenants that hold an assured tenancy with another Registered Provider or Local Authority immediately prior to allocation of a Papworth Trust property, provided the assured tenancy was granted prior to 15 January 2012

### 2.0. Aims

The aims of the fixed term tenancy scheme are:

- a) To ensure Papworth Trust is able to make best use of its housing stock, and in particular, ensure that properties designed or adapted for occupants with disabilities are occupied by those that can truly benefit from them

- b) To support tenancy sustainment, and ensure that people are encouraged to develop the right skills to enable them to sustain a tenancy
- c) To encourage tenants to explore other housing options available to them

### **3.0. Definitions**

- 3.1. Fixed term tenancies were introduced by the Government through the passing of the Localism Act 2011 and by making changes to the regulatory framework for social housing, which removed the requirement that all social landlords offer the most secure form of tenancy.
- 3.2. The tenancies are fixed term assured shorthold tenancies
- 3.3. The term fixed term tenancy is used in relation to tenancies that are for a set period of time, as opposed to assured tenancies that do not have a specified end date.
- 3.4. Fixed term tenancies will be granted in with two forms:
  - a) As a six-year fixed term tenancy with an inclusive 12 month probation period (starter tenancy); or
  - b) As a five-year fixed term tenancy with no probation period
- 3.5. A six-year fixed term tenancy with a probation period is used for new tenants
  - 3.5.1 The probation period will be managed in conjunction with the starter tenancy policy.
- 3.6. A five-year fixed term tenancy will be granted where a fixed term tenancy is being renewed either upon expiry of a six-year fixed term tenancy with probationary period, or another five-year fixed term tenancy.
- 3.7. Papworth Trust will consider whether a household is vulnerable by reason of age, disability, illness and households with children when considering which type of tenancy is appropriate.

3.7.1. In exceptional circumstances it may be appropriate to grant a tenancy type outside of the terms of this policy where a household member is vulnerable and a tenancy under this policy may not be appropriate for their needs.

#### **4.0. Fixed Term Tenancy Review**

- 4.1. In the final year of the fixed term tenancies period it will be necessary to review the tenancy to inform a decision to:
- a) End the tenancy; or
  - b) Grant a five year tenancy for the existing property; or
  - c) Grant a five year tenancy at an alternative property
- 4.2. Tenants will be expected to engage fully in the review.
- 4.3. Any recommendation to end the tenancy by notice must include a detailed report for consideration. The report will detail the issues that have led to the recommendation and all the actions taken to resolve or to attempt to resolve the particular problem(s).
- 4.4. Each case will be considered individually
- 4.5. Approval of the service of notice to commence action for possession will only be granted where:
- a) All appropriate steps have been taken to give the tenant reasonable opportunity to resolve the issue(s) and the issue(s) remain; or
  - b) If the tenant were to hold a lifetime assured tenancy, we would be considering legal action to end the tenancy.
  - c) A proportionality assessment has indicated that it is a legitimate and proportionate course of action to take and consideration has been given to s15 Equality Act 2010

4.6. Circumstances where Papworth Trust may commence action for possession may include but will not be restricted to:

- non-payment of rent
- serious anti-social behaviour;
- poor condition of the property or repeated refused access to the property;
- The tenant no longer requires the accommodation or their needs would be better suited to a different type of housing or tenancy (e.g. due to care and support needs);
- Tenancy fraud has been identified during the fixed-term;
- The tenant has not engaged in the review process;
- The tenant does not wish to accept the terms of the new fixed-term tenancy;
- The tenant or a member of their household has come into legal ownership of another residential property or Papworth Trust has become aware that the tenant owns another property.

4.7. Household income will also be used in reviewing the tenancy to ensure Papworth Trust makes best use of its housing stock and continues to offer social and affordable housing to those who have a current need.

4.7.1. In the final year review of the tenancy if the income exceeds the level that would exclude the household from joining their local Housing Allocations Scheme, a further fixed term will not be offered.

4.8. If the decision is taken not to grant a further tenancy, the tenant will be given advice and assistance on their housing options based on their circumstances and signposted to relevant agencies to assist with re-housing.

4.9. If at the end of the fixed-term the tenant has not vacated the property and a short period of time is required for alternative accommodation to become available Papworth Trust may agree not to recover immediate possession.

4.9.1. During such period Papworth Trust is not creating a new tenancy and the tenant will be required to continue to pay any charges due and comply with all the terms of the fixed-term tenancy until such time that the property is vacated.

## **5.0. Ending a Fixed Term Tenancy**

5.1. Where a decision is made not to renew a fixed term tenancy, Papworth Trust must serve the tenant with a 'minded to' notice stating that they do not propose granting another tenancy on expiry of the fixed term and the reasons for that decision.

5.1.1. The 'minded to' notice must be served at least 6 months before the end of fixed term.

5.2. Following service of a 'minded to' notice, the tenant has the right to appeal to review the decision. Appeals will be judged on an individual basis in accordance with the review procedure at clause 6.

5.3. If the review upholds the original decision, possession proceedings may commence as appropriate

5.4. To commence action to end the fixed term tenancy, it is necessary for a notice under section 21(1) and (4) of the Housing Act 1988 (as amended) to be served on the tenant.

5.5. The tenancy will not terminate unless there is an order of the court ending the tenancy.

5.6. In these circumstances the court, having satisfied itself that the notice and review procedures have been followed correctly, must grant possession. The only power available to the court, in exceptional cases, will be to postpone the date for giving up possession for up to 6 weeks.

- 5.7. The exception to clause 5.6 is where the tenant raises a proportionality defence. In such cases, it will then be at the discretion of the Judge to determine whether the case can be dealt with summarily in consideration of a proportionality assessment, or whether further directions will be given as to the management of the case.
- 5.8. On the date on which the tenant is to give up possession under a court order the tenancy ends and the eviction can proceed.

## **6.0. Reviewing a Decision not to Renew a Fixed Term Tenancy**

- 6.1. A request for a review of the decision not to renew a fixed term tenancy must be made in writing before the end of the period of 14 days, beginning with the day on which the 'minded to' notice is served on the tenant.
- 6.2. Upon a written request being duly made to it, the Papworth Trust shall review its decision.
- 6.3. The review shall not be by way of oral hearing unless the tenant informs Papworth Trust that they wish to have such a hearing before the end of the time permitted at 6.1 above.
- 6.4. The review shall be carried out by a person who was not involved in the original decision not to renew and who has had no prior involvement in the case.
- 6.5. The review shall be carried out by a person with greater seniority to the person who originally made the decision.
- 6.6. Review without a hearing
  - 6.6.1. The tenant may make representations in writing in connection with the review.
  - 6.6.2. The tenant will be advised as to a deadline for submitting representation, which will not be less than 7 days from the request for a review.

## 6.7. Review by way of a hearing

6.7.1. If there is to be a review by way of oral hearing the tenant has the right to:

- a) be heard and to be accompanied and may be represented by another person whether that person is professionally qualified or not, and for the purposes of the proceedings any representative shall have the rights and powers which the tenant has
- b) call persons to give evidence
- c) put questions to any person who gives evidence at the hearing; and
- d) make representations in writing

6.7.2. The tenant notice of the date/time and location of the hearing which shall not be less than 7 days after receipt of the request for a hearing. If the tenant has not been given such notice, the hearing may only proceed with the consent of the tenant or his representative.

6.7.3. The landlord shall also provide the tenant with copies of all evidence (in chronological order) not less than 7 days after receipt of the request for a hearing. Any personal details of data subjects should be removed unless permission to disclose their details has been obtained. The tenant and the person carrying out the review should receive exactly the same documentation.

6.7.4. If any person shall fail to appear at the hearing, notice having been given to them in accordance with 6.7.2 above, the person conducting the review may, having regard to all the circumstances including any explanation offered for the absence, proceed with the hearing notwithstanding their absence, or give such directions with a view to the conduct of the further review as that person may think proper.

- 6.7.5. Any application to postpone a hearing may be granted at the discretion of Papworth Trust
  - 6.7.6. A hearing may be adjourned by the person hearing the review at any time during the hearing on the application of the tenant, their representative, or at the discretion of the person hearing the review.
  - 6.7.7. If a hearing is adjourned part-heard and after the adjournment the person or persons hearing the review differ from those at the first hearing, proceedings shall be by way of a complete rehearing of the case.
- 6.8. The tenant will be notified of the decision in writing within 14 days of the review hearing. If the decision of the review is to uphold the original decision, they will also be notified of the reasons for the decision.

## **7.0. Ending a Fixed-Term Tenancy during the Term**

- 7.1. In addition to ending a fixed-term tenancy in the circumstances set out earlier in this policy, it may be necessary to end the tenancy within the fixed-term if it is not being conducted in an appropriate manner.
- 7.1.1. This will be done by serving notice of seeking possession under the relevant ground(s) for possession, as set out in Schedule 2 of the Housing Act 1988 (as amended).
- 7.2. If the tenant chooses to end the tenancy before the end of the fixed-term they may do so by offering to surrender the tenancy giving at least four weeks' notice.
- 7.2.1. Papworth Trust will not unreasonably refuse to accept such offer to surrender.
  - 7.2.2. In the case of joint tenants both tenants must agree to the surrender.

- 7.3. If the tenant has abandoned the property during the fixed-term, steps will be taken to forfeit (end) the tenancy and recover possession.
- 7.4. A decision to seek possession in this way will be at the sole discretion of Papworth Trust.

## **8.0. Requirement to provide Prescribed Information**

- 8.1. Under a fixed term tenancy, in accordance with The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015, Papworth Trust must provide the tenant with the information below:
- a) Regulation 2 requires the tenant be provided with an energy performance certificate and a gas safety certificate before occupation.
- b) Regulation 3 requires the tenants be provided with a copy of the Department for Communities and Local Governments booklet entitled "How to Rent: the checklist for renting in England" which can be found by following this link <https://www.gov.uk/government/publications/how-to-rent>

## **9.0. Regulatory and Legal considerations**

- 9.1. This policy complies with all statutory, regulatory and legal requirements, in particular:
- The Tenancy Standard in the HCA's Regulatory Framework
  - Section 21 Housing Act 1988 (as amended)
  - The Localism Act 2011.
  - The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015

## **10.0. Version tracker**

Version number	Date	Comments/Reason for issue
1.0	Sept 2017	New policy

## 11.0. Document Control

Author                      Business Manager, Housing  
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***If you have any feedback or want to suggest corrections to this policy, please contact the Business Manager - Housing on 01480 357200.***

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