

Notes on the Stevenage Borough Council Scheme of Introductory Tenancies

1. Background

The Housing Act (1996) gives local housing authorities the power to introduce a scheme of Introductory Tenancies for new tenants. DoE Circular 2/97, and the Introductory Tenancies (Review) regulations 1997, govern operational issues regarding Introductory Tenancies.

The main aim of Introductory Tenancies is to make it easier for local authority landlords to obtain vacant possession of a property where a new tenant is in breach of their tenancy conditions, or where a new tenant is causing a nuisance or harassment to their neighbours.

At a meeting of the Council's Executive on 29th May 2002, Members resolved to have an Introductory Tenancy Scheme for Council Tenants in Stevenage.

2. Introductory Tenancies

In essence an Introductory Tenancy is a "trial period" of up to 12 months from the commencement of tenancy. At the end of the 12 months the tenant becomes a secure tenant, unless the Council has served an appropriate notice and has commenced possession proceedings before the expiry of the trial period. Merely serving a notice is not sufficient, there must be an application to the Court.

- Introductory tenancies may be granted only to new local authority tenants. They may not be granted to existing secure tenants transferring or exchanging within a local authority's stock or from another local authority landlord.
- Introductory Tenancies may not be applied retrospectively to existing tenancies.
- If a local authority ends an Introductory Tenancy Scheme, existing introductory tenants become secure tenants.

A local authority landlord can end an Introductory Tenancy like ending a secure tenancy, only by obtaining a court order. However, unlike secure tenancies, the court **must** make a possession order to evict an Introductory Tenant provided that the landlord has complied with the correct procedure.

Stevenage Borough Council Scheme – The granting of Introductory Tenancies is the responsibility of the Housing Needs Section (Allocations). The management of Introductory Tenancies is the responsibility of the Tenancy Services section.

The Council lets approximately 600-700 tenancies in any one year. However, around half of these are tenants transferring, for whom Introductory Tenancies will not apply.

3. Obtaining Possession

Before commencing possession proceedings the landlord must serve a valid notice on the tenant, known as Notice To Terminate. There is no need for the landlord to prove grounds for possession, but the notice must set out the reasons for the decision to evict (rather than "to seek possession"). The reasons must be lawful i.e. they cannot be invalid or in bad faith.

Stevenage Borough Council Scheme – At a meeting of the Council's Executive on 28th May 2003, Councillors confirmed that a Notice To Terminate (NTT) shall be served on Introductory Tenants for the same reasons that an Notice of Seeking Possession (NSP) would be served on secure tenants, and at the same stage in the Council's usual enforcement process.

Following receipt of the NTT the tenant is entitled to request a review of the decision. This review must be conducted in accordance with the Introductory Tenancies (Review) Regulations 1997,

which allow for a paper review, or a Personal Hearing. If there is an oral hearing then the tenant may attend with a representative, cross examine any witnesses and call their own witnesses (although they do not have to insist that complainants give evidence). The hearing may be in the tenant's home or any location they reasonably request (i.e. not a Council's Offices).

The review of the decision must be carried out by a person who was not involved in the decision to apply for an order for possession. Where the review of a decision must be carried out by a person who was not involved in the decision to apply for an order for possession. Where the review of a decision made by an officer is also made by an officer, the reviewing officer shall be someone who is senior to the officer who made the original decision.

The Review must be arranged within 14 calendar days of the tenant requesting it, and the tenant must be given 5 days' notice of the review date. The landlord may choose to have elected Members involved in the Review panel, and the Introductory Tenant may choose to have a representative attend any hearing.

The Review Officer/Panel must consider not only the procedural aspects of the case, but also whether or not the tenant was made aware of the consequences of his/her actions, and whether or not the Council is being fair and equitable in serving Notice, because the Notice will usually lead to eviction.

Following a review the landlord must give the Introductory Tenant written notification of their decision. If the decision is to proceed with repossession, then the matter must be heard in the County Court.

If the Review Officer/Panel decides to rescind or cancel the Notice, the landlord may serve another one immediately. For example if the Review Officers find that the landlord should not have served Notice as the nuisance at the time was minor, if the nuisance continued, the landlord can serve a new Notice on the basis that the nuisance is now persistent and/or serious.

Stevenage Borough Council Scheme – In the event of an Introductory Tenant requesting a Right To Review, the paper review shall be carried out by the Head of Housing (or Director of Community Services) or a Section Head from the Housing Division, provided he/she was not involved in the decision to serve the Notice.

At a meeting of the Council's Executive on 28th May 2003, Councillors confirmed the arrangements above and also decided not to involve elected Members on the Review Panel, as this would be inconsistent with current appeals processes elsewhere in the housing division, and may also compromise Members' abilities to act as advocates for individual constituents.

To obtain possession the landlord must simply prove to the County Court the correct procedure has been followed. However the tenant may challenge possession on the grounds that no reasonable authority could have reached the decision to evict them and seek a judicial review of the decision. In the event of such a challenge the County Court may adjourn the action for possession subject to the outcome of a judicial review.

Judicial reviews are conducted in the High Court. A review in the High Court will require extensive preparation by the Council and the employment of the Counsel, and if the tenant pursues their right to judicial review, will prove more expensive and time consuming than obtaining possession of a secure tenancy through the County Court.

If the case proceeds to Court, the Judge must be satisfied that the legal paperwork is correct. If satisfied, the Judge then confirms the Eviction/Possession date. The Judge cannot consider whether or not the landlord's wish to evict the tenant is reasonable or in proportion to the tenant's conduct, only whether or not the landlord has complied with legal requirements.

Stevenage Borough Council Scheme – See section 5 on page 3 for our approach to these issues.

4. Tenancy Rights

An Introductory Tenancy does not confer the same rights as a secure tenancy:

Rights for both forms of tenancy:

- Succession (but only to an Introductory Tenancy for an Introductory Tenancy)
- Assignment (but only to an Introductory Tenancy for an Introductory Tenancy)
- Right to be consulted on Housing Management issues
- Right to Repair

Rights for Secure Tenants only:

- Right to take in lodgers (including Carers)
- Right to compensation for improvements
- Right to exchange

The Right to Vote on Stock Transfer and the Right To Buy are both limited by statute to Secure Tenants only, although Introductory Tenancy does count towards the qualifying period for Right to Buy.

Some authorities suggest that as many as possible of a Secure Tenant's rights are granted to Introductory Tenants, as this allows and encourages them to conduct their tenancy in the same way that all other tenants do. The Introductory Tenancy is designed to deliver speedy action for a landlord against nuisance tenants; it is not intended to create a second-class tenancy. Introductory Tenancies are sometimes known as Probationary Tenancies or Starter Tenancies.

Stevenage Borough Council Scheme – Customers supported this view in the consultation exercises, and although Member disagreed, they decided that the rights shown above for Secure Tenants ARE to be extended to Introductory Tenants of Stevenage Borough Council, subject to our usual processes and procedures.

5. Good Practice

Good practice recommends that Introductory Tenants are given the same form of Tenancy Contract as other tenants (subject to local decisions on legal rights) and that the same level of tolerance is shown to Introductory Tenants as is shown to other tenants, especially for breaches of tenancy that are common across all types of tenancies, such as falling behind with rent. Introductory Tenancies are designed to speed up the legal process in serious or persistent cases of nuisance, not to create double standards or harsher treatment for different sorts of tenants.

Stevenage Borough Council Scheme – Customers supported this view in the consultation process, as did Members. However it means that Introductory Tenants could face eviction after only 5 weeks' non-payment of rent, or for serious nuisance. Staff need to ensure that they follow current procedures (e.g. home visits) and that the tenants claims understand the consequences of their actions (see section 3).

6. General Information

Less than a third of Authorities have introduced Introductory Schemes. One reason for the relatively low take up is because of concerns about the complexity and additional costs associated with the schemes.

Stevenage Borough Council Scheme – There is no additional funding for the management of Introductory Tenancies or for any costs associated with the scheme, estimated at an additional £15k pa. This was a decision by Members (Executive, 28th May 2003) taken in recognition of the

pressures of the Housing Revenue Account. It was part of the decision that costs would thus be made from savings made by not doing other work.

Research by the Joseph Rowntree Foundation has shown that fewer than 10% of Authorities have successfully undertaken evictions for rent arrears through the Introductory Tenancy route, and for anti-social behaviour the figure drops below 3%. The Joseph Rowntree Foundation argues that these figures show that the scheme is ineffective against anti-social behaviour, but others argue that Introductory Tenancies may be acting as a powerful deterrent.

Authorities with successful anti-social behaviour policies are clear that their success is linked to the amount of resources committed to tackling issues as much as relying on purely “legalistic” approaches. For example, the City of Manchester has introduced an Introductory Tenancy scheme as part of its anti-social behaviour policy. Although there is no clear evidence as to whether this in itself has been effective in tackling anti-social behaviour, in the context of the overall anti-social behaviour policy in Manchester, there is some evidence of a greater willingness for new tenants to engage more constructively with staff in solving problems.

Manchester Housing staff claim that they have fewer problems with new tenants than they used to. It may be however that this is a result of Manchester’s “low tolerance” approach to all forms of anti-social behaviour, or indeed that anti-social tenants are no longer seeking tenancies from the Council. Manchester’s staff have said that they have also noticed that existing tenants seem to be causing fewer problems and/or resolving them more constructively, which tends to support the view that it is the general approach that is having an effect, not just Introductory Tenancies.

Stevenage Borough Council Scheme – members wish to monitor our scheme quite closely, and at executive on 28th May 2003 resolved:

That the Executive Portfolio Holder for Housing should be informed of Notices served on Introductory Tenants and on outcomes of reviews and Court proceedings, and that this information is also made available statistically on a quarterly basis to FOSTA and to the Housing and Wellbeing Scrutiny Committee.

Richard Stephens
Tenancy Services Manager
2nd February 2004

Appendix 1

A Summary Comparison of Possession Proceedings

Secure Tenancies	Introductory Tenancies
A valid notice is served in accordance with the Housing Act (1985).	A valid notice is served in accordance with the Housing Act (1996).
Following expiry of the notice (28 days) a hearing at a county court may be requested	A tenant may appeal against the notice within 14 days. The appeal must be held in accordance with regulations.
County court hearing held. A judge may refuse possession, award final possession within 28 days, or award a possession order that is suspended subject to specified conditions being performed by the tenant.	The landlord must give written notice of the decision of the appeal
If a final 28 day possession order is made, or if the tenant has not performed the conditions attached to a suspended order, an appointment may be made for the bailiff to repossess the property.	Following appeal a court hearing may be requested
The tenant may apply for a stay against the enforcement of a possession order, such applications to be heard at county court and either possession granted or possession suspended subject to specified conditions being performed by the tenant.	The tenant has the right to challenge the decision and seek a judicial review on the grounds that no reasonable authority could have reached the decision to evict them.
	County court hearing held. If no judicial review has been requested, the judge must grant final possession if procedures have been followed. If a judicial review is requested a judge may adjourn the hearing.
	Judicial review held in the High Court. High Court judge may choose to grant or refuse possession to the landlord.
	If possession is granted, an appointment may be made for the bailiff to repossess the property.