

## Succession Policy

<b>Purpose</b>	<p>Succession is the process whereby a tenancy passes to another person on the death of the original tenancy holder or joint tenant.</p> <p>Only certain individuals are able to succeed to a tenancy upon the tenant's death and this will depend on various things such as the type of tenancy held by the deceased, and the relationship with the deceased tenant.</p> <p>This policy will clarify the circumstances in which a person may succeed to an Eastlight tenancy agreements, but it does not apply to leases or licences</p>
<b>Owner</b>	Head of Housing Services
<b>Related documents</b>	Tenancy Agreement
<b>Approved by</b>	Executive Director of Operations Director of Housing
<b>Date approved</b>	
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## **1. POLICY STATEMENT**

- 1.0 Succession is the process whereby a tenancy passes to another person on the death of the original tenancy holder or joint tenant. Only certain individuals are able to succeed to a tenancy upon the tenant's death and this will depend on various things such as the type of tenancy held by the deceased, and the relationship with the deceased tenant.

## **2. SCOPE**

- 2.0 This policy applies to all Eastlight new tenancy agreements from July 2020. Appendix A shows the different types of tenancies Eastlight offers and the succession rights for each type of tenancy. This appendix also includes tenancies issued prior to July 2020 for Greenfields and Colne tenancies and the succession rights that apply.

## **3. PRINCIPLES**

- 3.0 This policy will clarify the circumstances in which a person may succeed to Eastlights' tenancy agreements, but it does not apply to leases or licences.

## **4. AIMS AND OUTCOMES**

- 4.0 There are five different types of succession depending on the circumstances of the tenant, and their household, at the time of death:
- (i) Survivorship
  - (ii) Statutory succession
  - (iii) Contractual succession
  - (iv) Discretionary succession
  - (v) Devolution by will or intestacy

- 4.1 Please see Appendix A which summarises how each type of succession will be dealt with.

## **5. DEFINITIONS**

### **Survivorship**

- 5.1 Survivorship occurs by operation of law where a joint tenant dies. The tenancy passes automatically to the surviving tenant regardless of the relationship between the joint tenants. The surviving tenant will remain at the same address and no new tenancy agreement is created. The tenancy simply becomes a sole tenancy in the name of the surviving tenant.
- 5.2 Survivorship is not technically a succession, but it counts as one and prevents any further succession to that tenancy.

- 5.3 The following apply under the rules of survivorship:
- any existing rent arrears become the sole responsibility of the surviving tenant
  - any legal notices applying to the tenancy still take effect
  - all the rights and obligations related to the tenancy continue to apply to the surviving tenant
  - the surviving tenant continues to have the right to compensation for any previous improvements.

### **Statutory Succession**

- 5.4 Statutory succession is a legal right under Section 17(1) of the Housing Act 1988. This will apply where a sole tenant dies leaving a spouse, partner or civil partner who was occupying the property as his or her only or principal home immediately before the tenant's death.
- 5.5 As in survivorship the rules included in 5.3 apply but any existing rent arrears are owned by the deceased tenant's estate.
- 5.6 Eastlight are entitled to require evidence of the applicant's relationship with the deceased tenant, and of their residence at the property
- 5.7 Only one succession can take place. If the deceased tenant was already a successor themselves, there are no further rights of succession.

### **Contractual Succession**

- 5.8 Some tenancy agreements give tenants an additional right to a *contractual* succession. This applies to certain family members other than spouses, partners or civil partners who have lived at the property for at least 12 months prior to the tenant's death. (see Appendix A.)
- 5.9 As in survivorship the rules included in 5.3 apply but any existing rent arrears are owned by the deceased tenant's estate.
- 5.10 Eastlight are entitled to require evidence of the applicant's relationship with the deceased tenant, and of their residence at the property
- 5.11 Only one succession can take place.

### **Discretionary Succession**

- 5.12 In the case that a previous succession has occurred, or where the tenancy does not allow a contractual succession, Eastlight may grant a discretionary succession. In deciding whether to exercise this discretion Eastlight will take the following points into consideration:
- If the person has a priority need for housing in respect of their vulnerability as defined in the Housing Act 1996 (as amended.) This includes

vulnerability as a result of, old age, mental illness or handicap or physical disability or other special reason

- The length of time that the person has lived in the property as their only or principle home
- Any financial and/or support given by the tenant to the previous tenant
- Whether the person has been proven to have caused any anti-social behaviour at the property or in the locality of the property or have previous rent arrears

- 5.13 These are not intended to be an exhaustive list of things that Eastlight will take into account, and Eastlight can take into account any circumstances that they consider to be relevant.
- 5.14 Eastlight are entitled to require evidence of the applicant's relationship with the deceased tenant, and of their residence at the property. If such information is not provided or if the information is not considered sufficient, Eastlight may issue legal action.
- 5.15 In the case that a discretionary succession is agreed, this will create a new tenancy. The successor will be given the least amount of security e.g. a Starter Tenancy.

### **Devolution by Will**

- 5.16 Devolution by will is where a sole tenant leaves the tenancy to a designated individual through their will. This is not technically a succession. Eastlight may seek to terminate the tenancy in a case where the tenancy devolves to an individual who would not have otherwise qualified to succeed to the tenancy, using Ground 7 of Schedule 2 of the Housing Act 1988 (as amended).

### **Suitability of the Accommodation**

- 5.17 In all cases involving contractual and discretionary successions, consideration should be given to the suitability of the property for the successor. In cases where the successor would not be entitled to the property under Eastlight's allocation policy Eastlight will take the following points into consideration:
- If the person has a vulnerability as defined in The Housing Act 1996 (as amended) and moving to alternative accommodation would be detrimental to their health as a result of this vulnerability. This is vulnerability as a result of; old age, mental illness or handicap or physical disability or other special reason.
  - Any other protected characteristics under The Equality Act 2010.
  - The length of time that the person has lived in the property as their only or principle home. The length of residency should represent a significant proportion of the successor's life.

- Any financial and/or other support given by the tenant to the previous tenant.
- The prevailing demand for accommodation in the area.
- Whether the property has adaptations which are suitable for the needs of the successor.

5.18 Consideration of discretionary successions will be limited to certain family members as detailed below:

- Parents
- Children
- Grandparents
- Brothers and sisters
- Aunts and uncles
- Nephews and Nieces
- Step-relatives
- Adopted Children

5.19 In the case that Eastlight determines that the property is unsuitable for the successor, the successor must transfer to alternative accommodation. The successor will be given advice on how best to secure alternative accommodation which will include applying for housing. The successor will be given a period of six months to complete this and vacate the property. Eastlight may initiate court proceedings after this period if alternative accommodation has not been agreed, using Ground 9 of Schedule 2 of the Housing Act 1988 (as amended).

### **No right of succession**

5.20 If there is no right of succession a Notice to Quit will be served and the occupant will be asked to leave the property. In the meantime, housing advice and assistance will be offered to enable them to access alternative occupation. During this time, a letter will be sent to the occupier to outline that use and occupation charges must be paid.

## **6 STATUTORY AND REGULATORY REQUIREMENTS**

6.1 The Housing Act 1988 governs the rules of statutory succession. Other successions rights must be expressly stated in the tenancy agreement.

## **7. EQUALITY AND DIVERSITY**

7.1 An equality impact assessment was carried out for this policy and it identified positive impacts for the following protected characteristics.

As per the Housing Act 1996 definition of vulnerability, old age, disability (mental health and physical) and other (pregnancy and maternity, served in the armed forces) are considered a vulnerability, therefore people meeting this criteria will be considered for discretionary succession, if eligible.

Disability - consideration will be given if the successor requires an adapted property and the property in question has already had those adaptations made.

**8. REVIEW**

8.1 This policy will be reviewed in 3 years or if legislation changes.

**9. DATE OF POLICY**

1 July 2020

Appendix A

Tenancy Agreement	Rights of succession
Greenfields Transferring Tenancy Agreement V1/2	<ul style="list-style-type: none"> <li>• Statutory succession – sole tenant dies tenancy goes to spouse, partner or civil partner</li> <li>• One succession only but if previous succession prior to transfer from Braintree District Council on 12 November 2007 then one further succession (contractual) allowed</li> <li>• Discretionary 2<sup>nd</sup> succession (see policy)</li> <li>• Contractual succession to parent, children, grandparents, brothers and sisters, aunts and uncles, nephews and nieces, step relatives, adopted children</li> </ul>
Greenfields Assured Tenancy Agreement V 1/2	<ul style="list-style-type: none"> <li>• Statutory succession – sole tenant dies tenancy goes to spouse, partner or civil partner</li> <li>• One succession only</li> <li>• Discretionary 2<sup>nd</sup> succession (see policy)</li> <li>• Contractual succession to parent, children, grandparents, brothers and sisters, aunts and uncles, nephews and nieces, step relatives, adopted children</li> </ul>
Greenfields Tenancy Agreements V3	<ul style="list-style-type: none"> <li>• Statutory Succession only</li> <li>• Discretionary succession (see policy)</li> </ul>
Colne assured tenants	<ul style="list-style-type: none"> <li>• One statutory right of succession to spouse and civil partner</li> <li>• If no spouse or civil partner resident, a family member (including cohabiting partner) may succeed if have lived with the tenant continuously for the last 12 months – cohabiting partners only need to have been living with the tenant at the time of death</li> </ul>
Colne secure tenants	<ul style="list-style-type: none"> <li>• One statutory right of succession to spouse and civil partner</li> <li>• If no spouse or civil partner resident, a family member may succeed (including cohabiting partner) and have lived with the tenant continuously for last 12 months</li> </ul>
Colne assured shorthold tenants	<ul style="list-style-type: none"> <li>• One statutory right of succession to spouse and civil partner or cohabiting partner</li> </ul>

Eastlight Assured tenancies/starter/affordable/intermediate/rent tenancies	<ul style="list-style-type: none"> <li>• Statutory Succession only – sole tenant dies tenancy goes to spouse, partner or civil partner</li> <li>• Discretionary succession (see policy)</li> </ul>
Eastlight Transferring Tenancy Agreement	<ul style="list-style-type: none"> <li>• Statutory succession – sole tenant dies tenancy goes to spouse, partner or civil partner</li> <li>• One succession only but if previous succession prior to transfer from Braintree District Council on 12 November 2007 then one further succession allowed</li> <li>• Discretionary 2<sup>nd</sup> succession (see policy)</li> <li>• Contractual succession to parent, children, grandparents, brothers and sisters, aunts and uncles, nephews and nieces, step relatives, adopted children</li> </ul>
Eastlight assured tenancy V1c	<ul style="list-style-type: none"> <li>• Statutory succession – sole tenant dies tenancy goes to spouse, partner or civil partner</li> <li>• One succession only</li> <li>• Discretionary 2<sup>nd</sup> succession (see policy)</li> <li>• Contractual succession to parent, children, grandparents, brothers and sisters, aunts and uncles, nephews and nieces, step relatives, adopted children</li> </ul>
Eastlight assured tenancy VI d	<ul style="list-style-type: none"> <li>• One statutory right of succession to spouse and civil partner</li> <li>• If no spouse or civil partner resident, a family member (including cohabiting partner) may succeed if have lived with the tenant continuously for the last 12 months – cohabiting partners only need to have been living with the tenant at the time of death</li> </ul>
Eastlight assured shorthold tenancy	<ul style="list-style-type: none"> <li>• One statutory right of succession to spouse and civil partner or cohabittees</li> </ul>