

Succession to Tenancies

Secure tenancies

These are normally council tenancies, some housing associations also grant secure tenancies but they are very rare.

Tenancies that began before April 2012

All secure tenancies that started before April 2012 have the following statutory rights:-

- Security of tenure. This means the landlord can only evict a secure tenant in certain circumstances
- The right of a widow, widower or resident member of the tenant's family to take over the tenancy on the tenant's death (the right of succession)
- The right to pass on (assign) the tenancy to someone else

There are two possible ways a secure tenancy can be passed on to others. One way is by secession and the other way is by assignment.

Succession is the term used to describe how a tenancy can be inherited within the tenant's family after the tenant's death. A person who succeeds to a secure tenancy will also be a secure tenant.

The following people have the right to succeed:-

- The spouse or civil partner of a tenant. This does not include a cohabitee, but he or she may count as a member of the family; *or*
- A member of the tenant's family, including a cohabitee.

The successor must have been living at the tenant's property at the time of death, and the property must have been their only or principal home. In addition, a member of the family must have been living with the tenant for at least twelve months immediately prior to the death, although this period need not all have been at the same property. Short interruptions to the twelve month-period may be allowed.

A spouse or civil partner will have **priority** over any other member of the family who may qualify. A minor (person under 18) may be able succeed to a local authority secure tenancy.

A secure tenancy can normally only pass on by succession once. However, some secure tenants may have a tenancy agreement which allows the tenancy to pass by succession twice.

If the tenants' death was *after* 3 October 1980, then certain events, which are not strictly successions, are counted as a previous succession and there can be no further succession. The most important of these are:-

- where the current tenant was a joint tenant but automatically became a sole tenant when the other joint tenant died
- Where the tenancy was assigned to the current tenant.

Who is a member of the family

The following are members of the family for the purposes of succession: cohabitants, parents, grandparents, children, grandchildren, uncles, aunts, nephews, nieces, brothers and sisters. Step-relatives and half-relatives are included in these definitions.

If a secure tenant does not have a spouse or civil partner and more than one member of the family qualifies, they must decide between them who will become the new tenant. Only one member of the family can take over the tenancy. The family cannot succeed as joint tenants. If the family cannot agree who should succeed to a secure tenancy, the landlord can make the decision.

If a member of the former tenant's family (but not the former tenant's spouse or civil partner) succeeds to the tenancy *and* he or she is 'under-occupying' the accommodation, a local authority can take possession proceedings. The court will, however, only grant a possession order if it is reasonable to do so, and the local authority will have to provide other (smaller) accommodation.

Tenancies that began after April 2012

Secure tenancies that started after April 2012 can only be succeeded by the following people: husband, wife, civil partner, or

cohabitee. Family members will no longer be able to succeed the tenancy unless it is a term of the tenancy. (Written in the tenancy agreement).

In all cases the successor must have been living with tenant for at least 12 months leading up to the tenant's death.

Assured Tenancies (Housing Association)

An assured tenancy can only be succeeded by the following people:

Husband, wife, civil partner or cohabitee,

Other members of the tenant's family have *no* statutory right to succeed to the tenancy. However, the model tenancy agreement which most registered social landlords use gives the right of succession to other members of the family, provided they have lived in the accommodation for twelve months at the time of the tenant's death.

Ways to apply for succession

There is no set way to make an application to succeed a tenancy.

If the tenancy is a joint one then the succession takes place automatically upon the death of other joint tenant as long as they have been living with the tenant for 12 months at the time of the tenants death.

If a person wishes to succeed to a tenancy then they should contact the tenant's landlord and inform them of the tenant's death and that they wish to succeed the tenancy. this should be done as soon as possible. There is no requirement for this to be done in writing but it is best practice to do so. Most social landlord's will have a standard form that they use for succession applications.

You should provide evidence of their residency for the 12 months leading up to the tenant's death. That is the key period. Often family members who may have lived with the tenant for 20 years then move out only to return to look after them when they are unwell for the last few months of their life. These people will not be eligible to succeed due to not having lived with the tenant for the 12 months leading up to their death.

Evidence of residency can be very varied. It can be things like, letters, bank statements, GP registration, electoral register, or witness statement from friends, neighbours, health visitors and so on.

Further help and advice

Contact Island Advice Centre admin@island-advice.org.uk
Or call 0207 987 9379