

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting	Cabinet Member for Safe and Attractive Neighbourhoods
2.	Date	2nd July 2012
3.	Title	Council Housing - Sub-Letting and Lodgers
4.	Directorate	Neighbourhoods and Adult Services

5. Summary

The Housing Act 1985 allows all secure Council tenants to take in a lodger without the Council's permission. The Council can only object if the property would become statutorily overcrowded as a result. The Housing Act also allows secure tenants to sub-let part of the property provided that the Council's permission is sought and granted, and again, permission can only be refused if the property would be overcrowded.

This report sets out some of the issues associated with tenants taking in lodgers, and the actions RMBC can take as a result.

It proposes that the tenancy agreement and customer handbook should be updated, and a clear procedure document produced, along with guidance and training for staff and an information sheet for tenants.

6. Recommendations

- **Agree that the tenancy agreement and customer handbook should be amended to ensure clear wording around subletting and lodgers**
- **Agree that a clear and detailed procedure should be produced, alongside guidance and training for staff and an information sheet for tenants**

7. Proposals and details

7.1 Sub-letting

Sub-letting is when a tenant grants a 'sub-tenancy' to another person that allows them to have exclusive access to part or all of the home. Council tenants must occupy the property as their only or main residence and therefore they are not allowed to sub-let the whole property. If they do so, this is termed as 'unlawful sub-letting' and they can be evicted.

Secure tenants are legally allowed, however, to sub-let part of their home, provided that they seek permission from the Council. This is set out in sections 93 and 94 of the Housing Act 1985 and is commonly known as 'lawful sub-letting'. However, as a subtenant should technically have exclusive access to cooking and washing facilities, it is unlikely that we have any subtenants in our Council properties as kitchen and bathroom facilities would almost without exception be shared with the Council tenant. It is much more likely therefore that Council tenants take in lodgers.

7.2 Lodgers

Taking in a lodger is similar to sub-letting part of the home, as the rights of sub-tenants and lodgers are broadly similar and both usually involve sharing parts of the property with the Council tenant. However there are some important differences. A lodger rents a room in the Council tenant's home, not necessarily with 'exclusive access', and may receive some services from the landlord such as meals, laundry or cleaning. Arrangements are broadly less formal than for sub-letting.

Secure Council tenants are allowed to take in lodgers, in accordance with section 93 of the Housing Act 1985, and they are not legally required to seek permission from the Council. The Council can only object to lodgers if the property will become overcrowded as a result. Introductory tenants must seek permission.

7.3 National policy position

National policy in this area focuses on unlawful sub-letting and how landlords can tackle this and other types of social housing fraud. No changes are proposed to the legal rights of tenants to take in lodgers or to sub-let part of their home. In 2009, CLG issued a good practice guide for dealing with social housing fraud, which includes the requirement for Councils to have clear and detailed procedures for sub-letting and lodgers. In January 2012 Government launched a consultation that included taking tougher action against unlawful sub-letting – this does not apply to lodgers or sub-letting part of the home.

7.4 Information currently provided by RMBC

The tenancy agreement states that tenants must live in the property as their only or main home and therefore it is a breach of tenancy conditions to sub-let the entire property. This is clear and tenancy verification procedures are in place to ensure that when this happens, action can be taken. The tenancy agreement does not, however, contain specific reference to sub-letting all or part of the home and this report proposes that the agreement should be amended to include and clarify this.

As stated in 7.1, it is unlikely that we have any subletting and the rest of this report will therefore focus on lodgers.

Section 5 of the tenancy agreement terms and conditions states that secure tenants are allowed to take in a lodger, provided that it does not make the property overcrowded, while introductory tenants must seek written permission from the Council before taking in a lodger. The agreement does not require the tenant to inform the Council of the details of any lodgers and this report proposes that the agreement should be amended to encourage tenants to provide details of lodgers, reasons for which are set out in 7.5(D).

The customer handbook that is issued to all new tenants contains slightly different information to the tenancy agreement and must be updated to ensure it is accurate and aligns with the agreement and the information on our website.

7.5 Issues associated with lodgers

As set out in 7.2, tenants have the legal right to take in lodgers and unless the property will be overcrowded as a result, RMBC is unable to interfere with this right. There are, however, various issues to be taken into account:

- Tenants that take in a lodger or lodgers are likely to be under-occupying their property
- Tenants that take in multiple lodgers may be collecting more rent than their Council rent
- It is important that we have a clear procedure and information sheet for tenants
- We need to find out and record, wherever possible, the details of lodgers
- We need to take robust action where the behaviour of lodgers is causing a problem
- We need to be alert to potential indications of social housing fraud

Each of these is set out below with information on actions RMBC can take.

(A) Under-occupation

RMBC aims to encourage people who are living in Council properties that are too large for their needs to move into smaller properties, thus reducing their costs and freeing up homes for households that need them more. With the changes to the welfare benefits system, people who live in homes larger than they need will receive less housing benefit, and therefore more tenants will look to either move or take in lodgers to help with costs.

When RMBC becomes aware that a tenant is under-occupying a Council property (when, for example, a tenant enquires about taking in a lodger), the first action is to check whether there are any legal grounds for possession. The only circumstance in which the law allows the Council to remove a tenant from a property that is too large for them is under Ground 15A of Schedule 2 to the Housing Act 1985 *provided* that:

- The tenant is a successor
- It is less than 12 months since the Council learned that the previous tenant had died
- There is suitable alternative accommodation
- It is in all of the circumstances reasonable to make an order for possession having regard in particular the age and health of the tenant, the period of time that he or she has occupied the dwelling as his or her home, the location of family and any support network to the dwelling and to the alternative accommodation

If this is the case RMBC should consider whether to follow this route. In most cases this will not apply, and the tenant should therefore be referred to the downsizing project. RMBC has a down-sizing officer who proactively works with under-occupying tenants with a view to incentivising them to move into a smaller home. Although we have no legal power to prevent people from under-occupying, initiatives such as these can be effective.

If the tenant is unwilling to move the Council cannot withhold permission for the tenant to take in a lodger provided the property will not become overcrowded.

(B) Tenants that take in lodgers may be collecting more rent than their Council rent

There is very little the Council can do in these circumstances, other than referring the property to the downsizing officer and / or checking for any potential social housing or benefit fraud issues. In some cases it may be possible to argue that in taking in several lodgers and charging a commercial rent, that the Council tenant is conducting a form of trade or business at their home without the Council's consent, which breaches the provisions in clause 11 of the tenancy agreement (no trade or business from the dwelling without Council's permission). It is unlikely however that we would be successful in seeking possession on this basis.

(C) Procedure, guidance and information sheets for tenants

This report proposes that we produce a clear and detailed procedure document to cover all matters relating to subletting and lodgers, and to incorporate best practice as set out in the 2009 CLG toolkit. We will also produce an information sheet for tenants to include issues such as the impact on their housing benefit and to reiterate that the tenant is responsible for the behaviour of any lodgers.

(D) Obtaining and recording lodgers' details

Where possible we should obtain details of lodgers and enter them on the housing management IT system. There are clear benefits in having a better understanding of who occupies Council properties and how this contributes towards:

- Achieving best use of stock
- Reducing tenants' financial burden
- Preventing homelessness
- Tackling tenancy fraud
- Identifying fraudulent Right to Buy applications

(E) Antisocial behaviour caused by lodgers

If the lodger causes nuisance or annoyance, the Council tenant is in breach of their tenancy and possession can be sought under Ground 2 of the Housing Act 1985.

(F) Potential tenancy fraud

Staff should always be alert to the possibility of social housing fraud and understand how to tackle it. For example, the Council tenant may not be living in the property and therefore will have lost their security of tenure. Earlier this year, RMBC liaised with Fujitsu to explore the possibility of performing a pilot data scan of tenants' credit information with the aim of identifying patterns in tenant data to support the Council in identifying potential

tenancy fraud. Unfortunately, due to time constraints, this pilot was not delivered, however, the Fraud Team is currently considering proposals from other data matching agencies who have expressed an interest in carrying out a similar exercise. They are also looking at a number of potential tenancy fraud cases in Rotherham which may include an element of benefit fraud. It is envisaged that outcomes from these cases will help draft new social housing fraud procedures.

7.6 Summary of next steps

- Update tenancy agreement and customer handbook later in the year
- Produce clear and detailed procedure for staff
- Produce information sheet for tenants
- Ensure staff receive guidance and training on all issues relating to lodgers

8. Finance

There are no direct financial implications for RMBC, as the changes to the tenancy agreement will be made at the same time as the necessary changes resulting from the Localism Act, in the autumn.

There are financial implications for tenants, namely possible income tax implications should a RMBC tenant receive more than £5k per annum from lodgers, and welfare benefit implications for both the tenant and lodger.

9. Risks and uncertainties

If we do not implement the recommendations detailed in this report (i.e. to change the tenancy agreement / customer handbook and implement a clear and robust procedure for staff), the Council will not have a strong basis on which to take action against problems with sub-letting and taking in lodgers.

10. Policy and performance agenda implications

Rotherham's draft housing strategy states that we will make the best use of Council housing stock by ensuring that the right people are in the right homes.

11. Background papers and consultation

- RMBC tenancy agreement and customer handbook
- Tackling unlawful subletting and occupancy: Good practice guidance for social landlords (CLG 2009)
- Government's Social housing fraud consultation January – April 2012 and RMBC's response

Colleagues in Housing Options, Strategic Housing Investment Service, Housing Management and Legal Services have had an input into this report. Tenants will be consulted on changes to the tenant agreement and customer handbook later in the year.

12. Contact details

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