

# **DARTFORD**

## BOROUGH COUNCIL

# **TENANCY FRAUD POLICY**

Update April 2013

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## **1. About this Policy**

- 1.1 The Council made a commitment in its Annual Report to tenants in 2010 to develop a Tenancy Fraud Policy. This document sets out how Dartford Borough Council will prevent and tackle tenancy fraud within its own housing stock.
- 1.2 The policy applies to all Council tenancy lets, including lets made to new tenants, transfers and mutual exchanges.
- 1.3 The policy includes the following nine objectives:
  1. Housing applicants and their household members will be asked to supply proof of their current address at the application for housing stage.
  2. Proof of identity will be requested to be brought along to the property viewing.
  3. Proof of identity will be requested to be brought along to the tenancy sign up appointment.
  4. A full-face photograph of new tenants will be requested at the tenancy sign up appointment.
  5. Information about the rights and responsibilities around occupation will be provided to every new Council tenant at the sign up appointment.
  6. New tenant follow up visits will be carried out to check all correct persons have taken up occupancy.
  7. There will be a variety of ways that the public can report cases of suspected tenancy fraud.
  8. Regular awareness raising campaigns will be carried out about the impact of tenancy fraud with information on how the public can report suspected incidents.
  9. During the course of the tenancy there will be sound mechanisms in place to detect and identify tenancy misuse.

## 2. Context

### 2.1. **Dartford Borough Council's housing duties**

The Council allocates social housing (which includes Council homes and housing association homes) through choice based lettings under the Kent Homechoice scheme.

The Council will allocate social housing to those in housing need and to those who will use it as their only or principal home (as outlined in the Housing Act 1996). The Council's Allocations Policy is the framework document outlining the Council's criteria for the allocation of social housing.

Part VII of the Housing Act 1996 also places a duty on local housing authorities to provide advice and assistance to homeless people and people threatened with homelessness.

The Council owns and manages its own stock of 4,312 properties, including 580 supported units for older people.<sup>1</sup>

### 2.2. **What is tenancy fraud?**

This policy defines 'fraud' according to the Audit Commission's interpretation as:

*"any intentional false representation, including failure to declare information or abuse of position that is carried out to make gain, cause loss or expose another to the risk of loss"*<sup>2</sup>.

Tenancy fraud can present itself in various forms and at any stage during the tenancy life cycle. It can include:

- Fraudulently obtaining a tenancy (e.g. through misrepresentation of identity or circumstances).
- Non-occupation by the tenant as their principal home.
- Unlawful subletting (e.g. subletting the whole property to a single household or multiple sublets within one property).
- Wrongly claimed succession.
- Unauthorised assignments.
- 'Key selling' (where the tenant leaves the property and passes on the keys in return for a one-off lump sum payment or favour).
- Not notifying the landlord when the tenant moves out or passes away.

Appendix A provides the legislative context regarding occupation, and an explanation about the various forms of misuse of occupation<sup>3</sup>.

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<sup>1</sup> As at March 2013

<sup>2</sup> Protecting the public purse: Local government fighting fraud (September 2009) Audit Commission

### 2.3 **Why is tenancy fraud unacceptable?**

Social housing is a valuable national asset, which provides security and stability to millions of people in housing need in England. However, the Audit Commission estimates that there are as many as 50,000 social homes across the country that may be occupied fraudulently. This equates to more than 1 in 100 housing association and council homes<sup>4</sup>.

Those who commit tenancy fraud deprive people who are genuinely in need from accessing social housing. This is unacceptable and so the Council, as a landlord, has a duty to make the best use of public resources by ensuring that existing stock is properly managed and that tenancy fraud is prevented or appropriately dealt with when detected.

Tenancy fraud has a damaging impact upon the Council and its residents because:

- It can prevent people in genuine need accessing Council housing.
- The Council is not able to make best use of its housing stock.
- Some residents could spend longer in unsatisfactory, overcrowded or temporary housing if they are prevented from accessing housing because it is being blocked due to tenancy fraud.
- There is a greater risk of the property being used for illegal purposes.
- There is a greater risk of damage to the property as a result of modifications made to it to make it suitable for subletting to a number of tenants.
- The Council may have more difficulty gaining access to the property to carry out essential maintenance work, putting at risk the health and safety of the property and the occupiers within it.
- Unauthorised sub-tenants, unaware of their status, could be vulnerable to being charged increased rents or at risk of eviction and homelessness should the unlawful activity be detected.

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<sup>3</sup> This should be read in conjunction with the Communities and Local Governments 'Tackling unlawful subletting and occupancy: Good practice guidance for social landlords' (November 2009) (See <http://www.communities.gov.uk/publications/housing/housingfraudguidance>)

<sup>4</sup> Protecting the public purse: Local government fighting fraud (September 2009) Audit Commission

### **3. Application for housing stage**

#### **Policy objective 1:**

**Housing applicants will be asked to supply proof of residency at their current address for all household members, (including children) at the time of application for housing.**

- 3.1 The Council will take action to verify information supplied by the housing applicant. This may involve cross-checking the supplied details with both internal and external data sources to highlight any discrepancies or inconsistencies, with investigative action being taken upon any discrepancies found.
- 3.2 The proof of residency can include any of the suggested documentation listed in Appendix B.
- 3.3 For existing tenants wishing to transfer or mutually exchange, this information will also be requested as part of the application.
- 3.4 Housing applications are reviewed once a year on the date of the anniversary of the initial application.

### **4. Property viewings**

#### **Policy objective 2:**

**Proof of identity will be requested to be brought along to the property viewing.**

- 4.1 Getting evidence to validate identity can prevent tenancies from being obtained through deception.
- 4.2 When a property is ready to be let the successful housing applicant(s) will be asked to supply two forms of identification at the property viewing.
- 4.3 Appendix B details the types of identification that can be accepted. Should it be a joint tenancy, proof of identity will be requested for each joint applicant.

### **5. Tenancy sign up**

#### **Policy objective 3:**

**Proof of identity will be requested to be brought along to the tenancy sign up appointment.**

- 5.1 When the applicant(s) are asked to collect the keys and sign the tenancy agreement they will be asked to supply identification once again (as outlined in Appendix B).

**Policy objective 4:**

**A full-face photograph of new tenants will be requested at the tenancy sign up appointment.**

- 5.2 Having a photograph of the tenant(s) on file significantly reduces the opportunity for identity impersonation and unlawful subletting as they can be used to compliment identity checks and support the investigation.
- 5.3 The applicant(s) will be asked to bring a passport size photograph to the sign up appointment.
- 5.4 If the applicant is not able to supply a passport photograph (e.g. due to cost), they will be asked to consent to having a digital photograph taken at the appointment.
- 5.5 The reasons for requesting a photograph should be clearly explained and the applicant reassured that the Council complies with all data protection requirements regarding the use of personal information.
- 5.6 All such photographs taken will be electronically stored on the applicant(s) tenancy file. The tenant will be asked to sign a consent form which states that they agree to the storing of their photograph on file.

**Policy objective 5:**

**Information about the rights and responsibilities of the tenancy will be provided to every new Council tenant at the sign up appointment.**

- 5.7 The sign up appointment is also where new tenants are provided with information about how to conduct their tenancy in an appropriate manner and the consequences if there is a breach.
- 5.8 All new tenants will be provided with a handbook at the sign up stage, which includes information about the tenancy agreement and the consequences if this agreement is broken.

**6. New tenant follow up visit**

**Policy objective 6:**

**New tenant follow up visits will be carried out to check all correct persons have taken up occupancy.**

- 6.1. Settling in visits carried out shortly after signing the tenancy agreement are useful for the following reasons:
  - To confirm that occupancy has been taken up.
  - To validate that the residents living in the property are the ones on the tenancy agreement.

- To provide the new tenant(s) with advice and assistance on any property or tenancy related issue.
- 6.2. New tenant visits will be carried out 4 to 6 weeks after the tenancy start date. The visits will check that the tenant has moved into the property as his/her main residence and validate the identity of the tenant(s) through checking that the photograph/s on file match the tenant(s) in occupation.

## 7. Reports from the public

### **Policy objective 7:**

**There will be a variety of ways that the public can report cases of suspected tenancy fraud.**

- 7.1. Local residents are in a good position to notice changes in activities within their communities, which may lead to suspicions of tenancy fraud. This is because local residents develop day-to-day relationships with their neighbours so they are well placed to notice if new neighbours arrive or the previous resident moves away.
- 7.2. Public reports of suspected tenancy fraud are a very important source of intelligence for the Council. The Council will take all reports seriously, whether anonymous or not, and act upon them promptly. Requests for anonymity will be respected.
- 7.3. The public will be able to report suspected cases of tenancy fraud:
- By telephone using two options:
    - (a) the Fraud Hotline number (0800 854 440) where callers can speak to a trained investigator
    - (b) the unlawful sub-letting hotline (0800 032 0031) to leave a message
  - In person at the Civic Centre
  - Online via a web based reporting form at [www.dartford.gov.uk](http://www.dartford.gov.uk)
  - By email at [fraud.team@dartford.gov.uk](mailto:fraud.team@dartford.gov.uk)

## 8. Publicity

### **Policy objective 8:**

**Regular awareness raising campaigns will be carried out about the impact of tenancy fraud with information on how the public can report suspected incidents.**

- 8.1. It is very important that reporting mechanisms are well publicised and accessible to all members of the community. The identity of those

reporting suspected incidents of tenancy fraud will be protected if requested.

- 8.2. Raising awareness amongst residents about the impact of tenancy fraud and that the Council is serious about eliminating it will encourage the reporting of suspicious incidents.
- 8.3. Reporting tenancy fraud will be advertised as follows:
  - Through an article four times per year in the tenant and leaseholders newsletter 'The Link'.
  - By placing posters on communal area notice boards.
  - By having a page dedicated to tenancy fraud on the housing section of the Council's website.

## **9. Investigative and proactive measures**

### **Policy objective 9:**

**During the course of the tenancy there will be sound mechanisms in place to detect and identify tenancy misuse.**

- 9.1. There are a variety of proactive measures that can be employed to actively detect tenancy fraud. These will be routinely in place so that the Council remains proactive about tackling it.
- 9.2. No access for gas safety checks could indicate an abandoned property or that it is being unlawfully occupied. The Council will investigate all cases where no access is given.
- 9.3. The Council will take part in the National Fraud Initiative, which is a data matching exercise run every two years. The Council will use the information obtained through this initiative to its full potential to help focus its fight against tenancy fraud.
- 9.4. Tenancy fraud investigations will be carried out by trained investigators from the Council's Anti-Fraud Team and where tenancy misuse is discovered then appropriate action will be taken against the perpetrators.
- 9.5. Housing Services staff will receive periodic training on how to identify and take the appropriate action to deal with tenancy fraud.
- 9.6. It is also important that the Council works in unison with other local authorities, housing associations and landlords to provide a joint effort wherever possible in detecting and tackling tenancy fraud.

## **10. Supporting victims of unlawful subletting**

- 10.1. Some unlawful sub-tenants may be unaware of their unlawful status and could be vulnerable to illegal eviction by the tenant at little or no notice

when the situation has been uncovered. Unlawful sub-tenants are also vulnerable to eviction by the Council when it sets about recovering the property.

- 10.2. Victims of unlawful subletting will be offered advice from the Housing Options and Private Sector team in relation to their future housing options and rights.

## **11. Monitoring and review**

- 11.1. Having an understanding of the extent of tenancy fraud and possible trends locally will be useful for responding to any issues.
- 11.2. The following information will be recorded and used to monitor the levels of tenancy fraud in Council stock:
  - Numbers of tenancy frauds and types each year.
  - The actions taken and outcomes.
- 11.3. This information will be recorded by the Housing Management team and reported in the annual report to tenants and used to evidence how the Council is performing in the tackling of tenancy fraud.
- 11.4. This Policy will be reviewed by the Housing Manager and the Housing Policy and Development Manager on an annual basis.

## Appendix A - Legislative context

### **Making false statements to obtain Council housing**

It is a criminal offence to knowingly or recklessly make a statement which is false in a material particular or to knowingly withhold information when applying to join the local authority waiting list or when applying as a homeless person.

A strict time limit of six months applies from the date of the commission of the offence or from when the matter of the complaint arose. A prosecution cannot be pursued once the time limit has expired.

### **Eviction**

For **secure** and **flexible** tenancies, the court may order possession if it considers it “reasonable” and is satisfied that the tenancy was obtained through deliberate falsification.

For **introductory** tenancies, the Council does not have to prove “reasonableness” and can obtain possession as long as the court is satisfied that the procedures relating to the service of the notice of proceedings for possession and any review of the decision to serve the notice have been correctly followed. However, there may be occasions where the Council would need to establish that eviction is a proportionate step to take pursuant to the Human Rights Act before the Court will make an Order for Possession.

### **The Tenancy Agreement**

Dartford Borough Council’s tenancy agreement contains the following clauses in relation to use of the property:

*You are responsible for:*

- *Using the property as your only or main home. If you do not, you will lose your security of tenure and the Council may take possession of the property.*
- *Always residing in the property, with the exception of holidays or periods of illness. If you intend to be absent from the property for a period of 42 days or more, you should inform the Council before the period starts. Where it appears reasonable to conclude that you have abandoned the property (whether or not you have been away from home for 42 days or more), you agree that the Council can enter the premises, change the locks and take any other appropriate steps to protect the premises, including proceedings for possession on the ground that you no longer occupy the property. You also agree that the Council can recharge you for the reasonable costs in making the premises clean and safe and that you will accept liability for the loss of any property belonging to someone else which has been disposed of in this way.*

The grounds for possession for secure and flexible tenants that could be applied in relation to a tenancy fraud case are as follows:

**Ground 1:** *Non-payment of rent or other breach of tenancy conditions.*

**Ground 5:** *The tenancy was obtained through deliberate falsification.*

### **Rights of tenants regarding occupation**

#### **Subletting**

Section 93(1)(b) of the Housing Act 1985 gives **secure** and **flexible** tenants the right to sublet part of their home provided they have the landlord's written consent. The landlord cannot unreasonably withhold consent. **Introductory** tenants do not have the right to sub-let their home.

#### **Taking in lodgers**

Section 93(1)(a) of the Housing Act 1985 gives **secure** and **flexible** tenants an absolute right to take in lodgers. The landlord's consent is not required. **Introductory** tenants do not have the right to take in lodgers. A lodger will be classed as a licensee.

#### **Assignment**

Section 91 of the 1985 Housing Act allows assignment in three situations, these are:

1. Assignment by way of exchange (mutual exchange) (this right is given to **secure** and **flexible** tenants only. **Introductory** tenants do not have this right)
2. Assignment to someone who would be qualified to succeed the tenant on the tenant's death.
3. Where a court makes a Property Transfer Order in connection with matrimonial proceedings or civil partnership proceedings, or proceedings under the Children's Act 1989.

### **Unauthorised occupation**

Unauthorised occupation is possession by an occupier which is either prohibited or requires consent by the landlord which has not been granted or where an existing tenant continues in possession although the property is no longer their only or principal home. It includes all of the following:

- Unlawful subletting of the whole of the property
- Continued occupation by a tenant whose main residence is now elsewhere
- Unlawful or unauthorised assignment or exchange
- An assignment or exchange which was authorised but where a payment (a premium) was made
- Unauthorised occupation following the death of the original tenant (wrongly claimed succession).

### **Unlawful subletting**

Unlawful subletting is where the tenant claims to live in the property but instead lets it out. Unlawful subletting includes subletting the whole property to a single household, or multiple sublets within one property.

Where the whole of the property is sublet the tenant will be in breach of the tenancy conditions and the secure or flexible tenancy will cease. Once the tenure has been

lost it cannot be regained, even if the tenant moves back into the property. The tenant then only remains in possession as a common law tenant.

Where only part has been sublet (even if done without the Council's consent) and the secure or flexible tenant remains in occupation or possession of the rest of the property, the tenancy does not automatically lose its status. The tenant (who has sublet part without obtaining consent) will be in breach of the tenancy conditions but will still be a secure or flexible tenant.

#### Continued occupation by a tenant whose main residence is now elsewhere

Section 81 of the Housing Act 1985 states that the tenant must use the property as their "only or principal home". Non-occupation by the tenant is where they claim the property is their main home but it is not being used as such. If a tenant fails to use their property as their only or principal home they will lose their tenancy status. A contractual tenancy still exists, however, flexible tenants may not have their tenancy renewed at the end of the fixed term.

Cases of non-occupation will require the landlord to prove that the tenant is no longer living there and has no intention of returning.

#### Unlawful or unauthorised assignment or exchange

If the tenant goes ahead with the assignment without first obtaining the landlord's consent then the exchange will be treated as an invalid assignment. If the tenant obtains the landlord's consent by the tenant's fraud then the landlord can take action for possession on the basis that the consent has been invalidated by the fraud and there has been a breach of the tenancy agreement by way of an unauthorised assignment of the tenancy.

#### Unauthorised occupation following the death of the original tenant (wrongly claimed succession)

There are two aspects to checking an occupiers claimed succession right:

- The occupier is a person who is entitled to succeed under the Council's Tenancy Policy, (i.e. the right kind of relationship to the tenant, and the right period of residence); and
- Whether any succession rights have already been exhausted. (Where the tenant was himself/herself a successor then no further succession can take place).

Assuming the evidence can be obtained that the occupier is not entitled to succeed the tenancy, the landlord should terminate the deceased tenant's tenancy and then seek possession against the occupiers as trespassers.

## **Appendix B - Evidence for circumstances and identity**

### **HOUSING APPLICATION STAGE**

#### **Residency proof**

One of the following documents can be accepted to validate current residence:

- Household/utility bill
- Council Tax bill
- Payslip with address
- Tenancy agreement
- Letter from Housing Benefit which confirms benefit to the current address
- Bank/Building Society statements
- Child benefit or Job Seeker's allowance book
- Pension book
- TV Licence
- Car registration documents
- Correspondence from Government department such as DWP, NHS or Borders and Immigration
- College/school letter
- Tenancy Agreement (if you signed within the last four weeks)
- Mobile telephone statement

Proof of residency can be a photocopy and will be checked against the application form before being placed on file.

#### **Proof of children in residency**

One of the following documents can be accepted to validate proof of children under the age of 16 or in full-time education:

- Child benefit letter, with address as on the application and dated within the last 4 weeks, or an old Child Benefit letter together with the applicants most recent bank statement showing the credit and the current address.
- Child Tax Credit letter.

Children that do not live with the applicant on a full time basis cannot be considered as part of the housing application.

#### **No fixed address**

If the applicant has no fixed address they should provide a contact address and a letter from the person at that address giving their consent for correspondence to live there.

#### **Former homeowners**

If the applicant has previously owned a home either in the United Kingdom or abroad, they are to supply the completion statement for the sale of that property.

## **Foreign nationals**

- **EU/EEA nationals** – Will need to supply proof of working in the UK, a copy of a recent wage slip. If a couple where the partner is not working, they are to provide proof of civic partnership or marriage.
- **A2 nationals** – Will need to supply the same details as EU/EEA nationals and if they arrived before 2006 a photocopy of their visa or if they arrived after 2006 a copy of their registration certificate.
- **Rest of the world** - Will need to supply a clear photocopy of their passport and visa.

## **PROPERTY VIEWING AND TENANCY SIGN UP STAGES**

### **Proof of identity**

The following documents can be accepted to validate identity:

- Full UK or EU driving licence (with photograph) or a ten year UK or EU passport (with photograph)
- Plus one of the following:
  - Home Office documents confirming status
  - A current, valid credit or debit card with supporting bank statement with address
  - Child benefit or Job seeker's allowance book showing names and address
  - Pension book showing name and address
  - For elderly residents, the travel pass issued for free public transport (with photograph)

If a passport or driving licence with a photograph is not available, it is possible to accept two of the following forms of identification:

- Home Office documents confirming status
- A current, valid credit or debit card with supporting bank statement with address
- Child benefit or Job seeker's allowance book showing names and address
- Pension book showing name and address
- For elderly residents, the travel pass issued for free public transport (with photograph)

If none or only one of the above is available, the following documents may be considered, but do not provide conclusive proof of identity:

- Student identity card – from reputable university or college
- Public sector work ID card
- National Insurance Number Card
- Medical card with national insurance number
- Birth/adoption/marriage certificate
- P46/P60
- Certificate of employment in HM Forces

The documentation must be the original copies. Photocopies will not be accepted.