

Succession of tenancy

Definition

Succession of tenancy is the situation where a household member or another eligible person connected to the household applies to continue living in the property in circumstances where the head tenant is no longer residing at the premise.

Examples of when this may occur includes if the tenant dies or leaves the property due to imprisonment, ill health or disability.

Principles

NCCH aims to ensure that household members will not be made homeless or forced to suffer undue hardship because the tenant has died or left the property, whilst also acknowledging that social housing is a scarce resource and must be made available to those most in need. When deciding whether to approve a succession of tenancy, NCCH will balance the rights of access to social housing through succession of tenancy against the need to make our housing available to clients on the social housing register, particularly those determined to be "priority" or in very high need.

Applications

All applicants for succession must:

- complete the required Succession of Tenancy
- prove social housing eligibility
- provide required evidence to support their application

NCCH will not consider applications submitted more than six weeks (non indigenous) or 10 weeks for aboriginal and Torres strait islander clients after the tenant has died or left.

Rent not to be accepted

Where the applicant is in residence and application for succession has been made, or is likely to be made, the tenant will be clearly advised that any payments made to NCCH in the period until a decision is made, will not be regarded as rent but as an "occupation fee"

Assessment criteria

Unless otherwise stated, an applicant for succession of tenancy must:

- Be an approved additional occupant of the household and have had a satisfactory occupation within the tenancy for a period of two or more years or the entire tenancy if less than two years.
- Be an Australian citizen or permanent resident, and;
- Be able to satisfy NCCH that they can sustain a tenancy
- Be included on existing and previous applications for rent subsidies
- Repay any debts from previous tenancies. NCCH will negotiate a repayment plan before approving succession

- Be eligible for social housing and be able to demonstrate that, if succession was not approved, they would be in high housing need, commensurate with the general level of need or disadvantage currently being experienced by priority listed social housing register clients.
- Except for custodians and legal guardians of minors living in the property

Where the tenant has debts from previous tenancies. NCCH will negotiate a repayment plan before approving succession.

NCCH will generally not approve succession of tenancy if:

- The applicant has not been a declared household member, or included on applications for rent subsidies.
- The applicant is a sponsored migrant and holds a temporary visa, or they are an asylum seeker holding a temporary protection visa.
- Whilst an occupant of any NCCH property the client committed acts of violence, or serious verbal threats directed at neighbours or NCCH staff
- Whilst an occupant of any NCCH property, the client was involved in illegal activities at the property
- The client has been convicted of arson or deliberate malicious damage to a NCCH property.

Decisions concerning requests for succession will be made in accordance with the current agreed NCCH delegated authorities.

A new Property Condition Report will be completed prior to the creation of a new tenancy agreement with the applicant.

Accounts of the previous tenant

Succession of tenancy creates a new tenancy with a new tenancy agreement and debts of the former tenant cannot be passed on to the new tenant. If the tenant dies NCCH will write off any debts that they owe. If the tenant is in credit, NCCH will pay any money owed to their estate.

In cases where succession has not been approved:

- NCCH will ensure that the applicant has access to any existing housing products or alternative options that could be accessed in order locate alternative housing.
- The applicant will be dealt with sensitively and, where required, NCCH will ensure that a reasonable time, not exceeding 28 days, is given for the applicant to vacate the premises (ie in those cases where the tenant has already left the property)

Succession not approved

If the tenant has left the property and NCCH decides to regain possession of the property because it has declined succession and the remaining household members have not vacated, NCCH will obtain an Order of Possession from the NSW Civil and Administrative Tribunal (NCAT). Any application made to the NCAT will clearly state NCCH's reasons for seeking to terminate the tenancy and obtain vacant possession.

NCCH procedures

The succession process for NCCH comprises 2 parts A and B. Part A is the process when a tenant notifies NCCH that there has been a change in the household. NCCH will then assess if the clients/s are eligible for a provisional lease. If eligible the client will be offered a 6 month provisional lease.

Part B occurs when the client makes an application for succession. NCCH will then assess the information provided to determine if the client is eligible to continue living at a property managed by NCCH.

When a client notifies NCCH that there has been a change in the household, and they have submitted an application for succession within the 6 weeks (non indigenous clients) or 10 weeks for aboriginal and Torres Strait Islander clients they will be offered a 6 month provisional lease.

The application for Succession will be assessed during the period of the provisional lease and the client will be notified if they are approved to continue to live at the property under a succession of tenancy.

Provisional lease

If the client is not eligible for a provisional lease NCCH will decline any application for succession of tenancy that has been lodged.

NCCH will not approve a provisional lease if:

- Whilst an occupant of any NCCH property the client committed acts of violence, or serious verbal threats directed at neighbours or NCCH staff
- Whilst an occupant of any NCCH property, the client was involved in illegal activities at the property
- The client has been convicted of arson or deliberate malicious damage to a NCCH property.
- They have not had a reasonable occupation period in the tenancy and/or have not been included in rental subsidy applications or assessments for the property.

Aboriginal clients

Aboriginal clients must submit their application for succession of tenancy within 10 weeks after the date of change to the household.

There are circumstances where an application for succession may be approved if the applicant is an Aboriginal client who was not a member of the tenant's household at the end of their tenancy. NCCH will consider this if the applicant is the tenant's child or the tenant was active in their upbringing, they have grown up in the dwelling and have a long-term association with the dwelling and the area. Applicants must meet all other eligibility requirements for social housing.

Consistent with our aim to make culturally appropriate decisions concerning Aboriginal people, staff are encouraged to consult local indigenous agencies wherever appropriate in relation to decisions in such cases.

Succession to a spouse

- If the applicant is the tenant's spouse (i.e. married), NCCH will approve succession if:
- They are a citizen of Australia or permanent resident; and
- They can demonstrate they are married or in a common law relationship with the tenant
- They are currently residing in the property
- They meet the general assessment criteria for all applicants detailed in this policy

A spouse will be entitled to succession even if they have temporarily moved away for reasons related to the illness of the tenant, care of an ill person or their own ill-health. The spouse must provide evidence that their temporary absence was due to these reasons. The spouse is not required to meet the social housing income eligibility limits or asset eligibility criteria.

When it is difficult to determine the nature of the relationship, an appropriate NCC HC employee may ask to interview the applicant.

Minors

If the applicant is a minor aged 16 or 17 years, they may be granted succession if they demonstrate that they are able to care for themselves and can meet the terms of the tenancy agreement.

Carers

If the applicant is a carer, NCCH will not approve succession if the carer has maintained their own accommodation, separate to that of the tenant's dwelling, regardless of whether it is in the social housing or private rental market. If the applicant has relinquished a social housing tenancy to act as a carer to another person, then succession to that tenancy may be granted even if they have not been part of that household for the past two years.

Legal guardian or custodian of children

NCCH will approve succession of tenancy if the client is the custodian or legal guardian of minors and

- They were not part of the household at the time that the event occurred
- They would not otherwise be able to provide suitable housing therefore leaving them at risk of homelessness.
- They agree in writing to continue to live in the property to provide care for the children
- They are eligible for social housing

In the situation that the custodian or legal guardian does not meet the eligibility criteria for social housing, NCCH may decide to grant succession if;

- The client has been formally granted custody/legal guardianship of the children, and;
- It is in the best interest of the children and
- The client can demonstrate that no alternative accommodation is available that is suitable for the care of the children.

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In such circumstances, it may be necessary for NCCH to liaise with relevant community services agencies to ensure that this is the best option for the children involved.

If the applicant has applied for custody, NCCH may approve succession on the condition that the applicant agrees in writing that, if their custody application is not successful, they will relinquish the tenancy.

Recently released from prison

If the applicant was recently released from prison or institutionalised care, and they used to live in the tenancy, they must meet the eligibility criteria for succession previously indicated. NCCH will assess the application on its merits, but will not decline it on the basis that the applicant was not living with the tenant while in prison or institutionalised care.

Factors that NCCH will consider are the likelihood of the applicant living in the household if they were not in prison or institutionalised care, the tenancy history and their ability to otherwise meet their housing need.

Alternate accommodation

Where succession is approved, approval can be subject to the applicant agreeing in writing to move to an alternate, more suitable property. For example, the current property may be too large for the household complement, or it may be modified and required for a client with specific needs. In these circumstances NCCH will offer the approved applicant another suitable property in a similar location, if available.

Information for Clients

NCCH will ensure that applicants for succession are provided with information about the application, assessment and appeal (decision review) processes. In addition, where required, advice about other housing options will be provided.

Right to Appeal

An applicant can appeal a decision made by NCCH regarding an application for succession, and any such appeal will be handled by NCCH in accordance with its standard appeals handling process.

Where any such appeals are declined, applicants will be informed of their right to lodge an appeal with the NSW Housing Appeals Committee (HAC).

Where such an appeal (to HAC) has been made, NCCH will offer the tenant an extension on any current provision lease, in order for the appeal to be heard and considered by HAC.

Conflict of Interest

Any NCCH employee involved in the succession assessment processes must register any personal or other relationship with the applicant.

The employee must withdraw from any involvement in the assessment, decision or review of that application. The employee must not participate in any way or influence in any way, either implicitly or explicitly, the decision-making process when such a conflict has been declared. A Declaration of Interest Form must be completed and signed by the employee.

INFORMATION	
Title	Succession of tenancy
Section	Housing Services
National Regulatory Code Evidence Guideline	Performance Outcome 1: Tenant and Housing Services
National Community Housing Standard	Standard 1.3 Changing needs of tenants
Last review	31 August 2013
Next review	31 August 2015
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