



ABANDONMENT POLICY

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1. INTRODUCTION

1.1 This Policy is a statement of the Association's position on abandonment. The Association defines abandoned properties as:-

'those properties which are let to tenants who are no longer living there as their only or principle home and have failed to inform the Association of this'.

1.2 The Association will exercise its right to recover possession of a property which it believes to have been abandoned by the tenant, in accordance with the legislative requirements laid down by The Housing (Scotland) Act 2001.

1.3 Any reference in this policy to a Scottish Secure Tenancy (SST) is deemed to include a Short SST, for the purposes of abandonment procedures.

2. AIMS AND OBJECTIVES

2.1 The Association recognises the need to :-

- operate in a fair and accountable manner when dealing with properties which it believes have been abandoned
- ensure clear and consistent guidelines for staff in the handling of abandoned properties, and
- protect the rights of tenants by ensuring that thorough investigations are made regarding occupancy, before commencing abandonment proceedings

2.2 The Association also identifies the following key aims:-

- To determine whether a property is abandoned, as early as possible
- To minimise the time a property is unoccupied
- To minimise the cost of storing belongings
- To minimise the cost of repairs and lost rent
- To monitor the performance of the abandonment procedures

3. THE LEGAL AND REGULATORY FRAMEWORK

3.1 This policy reflects the Association's commitment to full compliance with all legal, regulatory and good practice standards in dealing with abandoned properties. The main pieces of legislation that apply in abandonment cases are noted below.

(i) The Housing (Scotland) Act 2001

Sections 17, 18, 19, 20 and 21 of the Act provide the legislative framework and associated conditions under which landlords can take action to recover properties which they believe to have been abandoned and also outline the circumstances under which tenants

may have recourse to court.

(ii) Scottish Secure Tenancy Agreement (SST)

The 2001 Act also created the SST, the terms of which all tenants are made fully aware at the point of taking up their tenancy. The Association has a duty to enforce the terms of the SST agreement to protect its own interests and those of its tenants. The terms specific to the Abandonment Policy are set out in sections:-

- 2.1. Failure to occupy the property as the principal home
- 6.4. Abandonment by the tenant.
- 6.7 Abandonment by a joint tenant.

(iii) The Matrimonial Homes (Family Protection) (Scotland) Act 1981

This Act protects the rights of occupancy of spouses in a matrimonial home and of cohabiting couples in the house where they cohabit. It also makes provision for the transfer of the tenancy of a matrimonial home between the spouses, in certain circumstances during marriage and on granting decree of divorce or nullity of marriage and also for the transfer of the tenancy of a house occupied by a cohabiting couple between the partners in certain circumstances. It also seeks to strengthen the law relating to matrimonial interdicts and connected purposes.

(iv) The Civil Partnership Act 2004 and the Marriage and Civil Partnership (Scotland) Act 2014

Under these Acts, same-sex couples can register a civil partnership, or enter into marriage, (respectively), which has almost the same legal effects, rights and obligations as marriage does for mixed-sex couples. Civil partners or same-sex married couples are entitled to the same property rights as married opposite-sex couples.

Cohabiting couples, whether of the same-sex or opposite sex, who live together as a couple without registering a civil partnership or being married, have some but not all of these legal rights and obligations. The law now gives same-sex cohabiting couples and mixed-sex cohabiting couples the same protections and obligations.

- 3.2. The Social Housing Charter sets the standards and outcomes that all social landlords should aim to achieve for their tenants as required by Section 31 of the Housing (Scotland) Act 2010. The relevant Charter standards in relation to this policy are:-

Outcome 1: - Equalities - *“Every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.”*

Outcome 11: - Tenancy Sustainment – *‘tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations’.*

3.3 The Association will have regard to the implications of all of these Acts and any subsequent amendment orders, when providing information and advice on occupancy rights to people who enquire about giving up their home.

3.4 Equal Opportunities

The Association will also have regard to its Equal Opportunities Policy in all aspects of the Abandonment Policy and procedures and will therefore seek to ensure equality of opportunity and treatment for all persons:-

No person or group of persons giving up a tenancy or taking on a tenancy will be treated less favourably than another person or group of persons because of their:

- age
- disability
- gender reassignment
- marriage or civil partnership (in employment only)
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual-orientation

Copies of the abandonment policy and procedures are available from the Association's office or via the website.

4. IDENTIFYING ABANDONED PROPERTIES

4.1 All staff in the course of their duties will be alert to any properties that have the appearance of being empty and will carry out rigorous checks on identified properties to establish if they have been abandoned and whether the tenant intends to re-occupy the property.

4.2 The Association will make reasonable enquiries and will take the following evidence as an indication of an abandoned tenancy:-

- (i) no clear and visible signs of the tenant resident at the household
- (ii) no response to several letters and visits to the property at different times of the day
- (iii) no response via any other information held on file regarding the tenant, e.g. mobile telephone numbers, emergency contacts etc.
- (iv) information from family, friends or neighbours re the abandonment of the tenancy
- (v) information from other sources including the Police, Housing Benefit, utility providers and other agencies or support groups, regarding any suspected abandonment of tenancy.

5. SERVICE OF APPROPRIATE NOTICES

- 5.1 The Association will take action to recover possession of a property which it believes to be abandoned in accordance with the procedures specified in Section 18 of the Housing (Scotland) Act 2001. A first abandonment notice (Appendix 2) will be served, together with a Statement of Delivery (Appendix 3) on the tenant by:-
- (i) leaving it at the property address
 - (ii) delivering it to the tenant (if at another known address)
 - (iii) sending it by recorded delivery post to either or both addresses
- 5.2 The notice will:-
- (i) state that the Association believes the property is unoccupied and the tenant does not intend to occupy it as their principal home;
 - (ii) require the tenant to inform the Association in writing within 4 weeks of service of the notice if they intend to occupy the property as their principal home;
 - (iii) inform the tenant that the tenancy will be terminated with immediate effect if the Association believes that the tenant does not intend to occupy the house by the end of the 4 weeks by way of serving a second notice on the property.
- 5.3 The Notice will include a clause which requires the tenant to remove all belongings from the property by the end of the 4 weeks' notice and outlines the arrangements for the security of tenants' belongings in their absence and for their return to the tenant or disposal.
- 5.4 Where the property is considered insecure or in a vulnerable state, the Association may forcibly enter the property to secure it.
- 5.5 If, at the end of the 4 week period since the serving of the first notice and after making adequate inquiries, the Association is satisfied that the property has been abandoned, the Association will serve a further notice on the tenant (on the 29th day) (Appendix 5) bringing the tenancy to an immediate end. The Association will then take possession of the property without any further proceedings.

6. TAKING POSSESSION OF A PROPERTY

- 6.1 Where the Association repossesses the property following the notice period, the locks will be changed, an inventory (Appendix 4) taken of any personal belongings left and photographs taken of these and any significant damage to the property, including a loft or outbuildings such as a garage or garden shed.
- 6.2 If there are any potentially stolen items within the property, this will be notified to the Police and appropriate action taken.

- 6.3 If any pets have been left in the property, the appropriate authorities will be contacted and appropriate action taken. Any comestibles found will be removed immediately.
- 6.4 The Association will arrange storage of belongings which have not been collected for a period of up to 6 months from the date on which the Association took possession of the abandoned property, but only provided the value of the belongings outweighs the cost of storage, plus the amount of any outstanding arrears of rent or other charges.
- 6.5 If the tenant has not collected their goods and paid the Association for their storage and delivery costs within 6 months of the date of repossession of the property, the goods will be disposed of. The Association will have the right to sell any of the goods and use the proceeds towards any costs incurred and/or any outstanding debts owed by the former tenant.
- 6.6 Where the Association does not consider the belongings to have sufficient value to cover their storage, and arrears charges, but feels they may have some personal value, the former tenant may be contacted in writing at their last known address or contact address, (if different from the property address) to provide a final opportunity for them to arrange to remove their belongings at a date and time agreed with the Association. Included in the letter will be advice on what will happen to the former tenant's belongings if they do not respond. If there is no response from the former tenant within a specified time the property will be disposed of.
- 6.7 Where the Association has some difficulty assessing the value of a former tenant's belongings against any outstanding charges, the assistance of a Sheriff Officer may be sought to provide a more formal assessment. In such circumstances, the Sheriff Officer's decision will be notified to the Association in writing and a copy held on the former tenant's file and the Sheriff Officer's decision as to whether to store or dispose of the goods will be upheld.

7. ABANDONMENT BY A JOINT TENANT

- 7.1 Where the Association has reasonable grounds to believe that a joint tenant has abandoned the tenancy, action may be taken in accordance with Section 20 of the Housing (Scotland) Act 2001, to bring the interest of the joint tenant to an end.
- 7.2 Evidence will be gathered as to the joint tenant not living there, as before. More rigorous enquiries may be required to guard against false claims of abandonment by the remaining joint tenant(s).
- 7.3 A First Notice for Abandoning Joint Tenant will be served (Appendix 6), together with a Statement of Delivery (Appendix 2), informing of the Association's belief that they have abandoned the tenancy and requiring them to contact the Association within 4 weeks to prevent their interest in the property being terminated.
- 7.4 If there is no response at the end of the notice period, the Association may serve a second notice (Appendix 7) giving the joint tenant a further 8 weeks to respond, i.e. 12 weeks in total, after which the joint tenancy will be treated as

abandoned and the tenancy will continue in the name of the remaining joint tenant(s).

- 7.5 Where any notice is served on a Joint Tenant, a copy of each notice will also be served on each of any other joint tenants on the tenancy. Any such action will only affect the interest in the joint tenant upon whom the original notice is served, not the tenancy itself which will continue in the name of the remaining tenant(s).
- 7.6 If a joint tenant who has abandoned leaves personal belongings behind and the remaining tenant does not want them, the Association has no legal obligation to remove these belongings from the property. This responsibility will lie with the remaining tenant. However, discretion may be exercised to assist the remaining tenant, but only where there are extenuating circumstances. This decision will lie with the Senior Property Services Officer and/or the Property Services Manager.
- 7.7 A joint tenant may end their interest in the tenancy at any time by giving 4 weeks written notice to the remaining joint tenant(s) and the Association. This notice will not terminate the tenancy, which will continue.
- 7.8 Any tenant(s) or joint tenant(s) will remain jointly and severally liable for the tenancy and for the payment of any rent or other charges due for that tenancy, unless and until they have satisfied the formal notice procedure for giving up their rights to that tenancy.

8. COMPLAINTS

- 8.1 The Association will treat tenants and other clients with respect and will be responsive to their views and priorities. The Association will provide information and advice on the Abandonment Policy and procedures and deal fairly and efficiently with anyone who appeals against, or complains about, any of its decisions or activities, in line with our complaints policy. Copies of the Policy will be available from the Association's office or on our website.

9. RECOURSE TO COURT

- 9.1 A tenant has the right to make application to the Sheriff against repossession within 6 months of the termination date (i.e. the date the second notice ends).
- 9.2 A joint tenant has 8 weeks to appeal against a decision to terminate their interest in the tenancy.
- 9.3 Tenants will therefore also be advised to seek legal advice should they wish to appeal against a decision taken as a result of this policy and procedures.
- 9.4 The Association will keep a record of all enquiries/discussions and any action taken in relation to the abandoned property, as this will provide essential evidence in the event of a legal challenge by a tenant.

10. MONITORING

- 10.1 Regular feedback on the management of abandoned properties will be used to improve service delivery by:
- (i) monitoring comments and complaints from tenants, and
 - (ii) considering the number of appeals to be re-housed by former tenants where abandonment has taken place and the relevant outcomes
- 10.2 Quarterly reports will be presented to the Operations Sub Committee in relation to abandoned properties as follows:-
- the number of abandonment notices served, withdrawn and enforced
 - the number of notices still live
 - the number of cases where abandonment took place prior to decree (where granted) being enforced.
- 10.3 Regular benchmarking with other organisations will be actively enabled through the SHN (Scotland's Housing Network's) benchmarking group, customised online reporting mechanisms and regular practice exchange forums and also via comparison with the ARC statistics as reported by the SHR (Scottish Housing Regulator) and by SHN.
- 10.4 Internal and external auditors will also carry out independent reviews of all policies and procedures on a regular basis and make recommendations to the Association.
- 10.5 The outcomes of all monitoring measures will form an integral part of any policy and procedural reviews.

11. GENERAL DATA PROTECTION REGULATION (GDPR)

The Association will comply with the Data Protection Act 2018 and the General Data Protection Regulation in relation to all personal information held.

The GDPR includes the following rights for individuals:

- What personal data we hold about them;
- The purposes of the processing
- The categories of personal data concerned
- The recipients to whom the personal data has/will be disclosed
- How long we intend to store your personal data for
- If we did not collect the data directly from them, information about the source
- The right to have incomplete or inaccurate data about them corrected or completed and the process for requesting this
- The right to request erasure of personal data (where applicable) or to restrict processing in accordance with data protection laws, as well as to object to any direct marketing from us and to be informed about any automated decision-making that we use

- The right to lodge a complaint or seek judicial remedy and who to contact in such instances

If a tenant/former tenant wishes a copy of relevant personal information which the association holds about them, subject access requests can be requesting in writing to the Association and we will respond within one month of this request. Further information regarding how we process your data can be found on our website along with a Subject Access Template.

12. ROLE OF THE COMMITTEE

12.1 The Role of the Committee in regard to abandonment is:-

- agreeing and reviewing the policy
- monitoring outcomes of the policy through reports
- considering complaints via the complaints process

12.2 All information provided to Committee will be in a form where confidentiality and anonymity of tenants is retained.

13. REVIEW OF ABANDONMENT POLICY

13.1 Unless recommended through analysis of the abandonment process, feedback from tenants, legislative changes or best practice guidance, the Abandonment Policy will be reviewed every 3 years.

14. CROSS REFERENCE WITH OTHER RELATED POLICIES

14.1 The Abandonment Policy and procedures also makes reference to the following Association Policies and procedures:

- Repairs and Maintenance Policy and procedures
- Void Policy and procedures
- Allocations Policy and procedures
- Estate Management Policy and procedures
- Equal Opportunities Policy and procedures
- Complaints Policy and Procedures