



# Abandonment

## Policy and Procedures

|                            |                      |
|----------------------------|----------------------|
| <b>Date Approved</b>       | <b>14 March 2024</b> |
| <b>Review Frequency</b>    | <b>3 Years</b>       |
| <b>Date of Next Review</b> | <b>March 2027</b>    |

## **ABANDONMENT AND REPOSSESSION OF PROPERTY**

### **1. AIM**

- 1.1 The Association's aim is to re-let properties as quickly as possible in order to minimise rent loss resulting from abandoned properties. The key aims are:
- To determine quickly where a property is abandoned
  - To minimise the rent loss
  - To minimise the time a property is unoccupied
- 1.2 To end a joint tenancy where it is believed that one of the joint tenants has abandoned the property. This gives security to the remaining tenant still residing in the property.
- 1.3 To follow procedures in line with Section 17 & 18 of the Housing (Scotland) Act 2001.

### **2. DEFINING ABANDONED PROPERTY**

- 2.1 On occasions some tenants cease to occupy their property without completing the procedure laid out in the tenancy agreement for terminating their tenancy. This situation is referred to as abandonment of the property.
- 2.2 Where the Association believes that a tenant has abandoned the property, Housing Management staff will make sufficient enquiries to be satisfied that the house is unoccupied and the tenant does not intend to occupy it as their only or principal home.

### **3. RECOVERING POSSESSION OF ABANDONED PROPERTY**

- 3.1 Where the Association's efforts to contact the tenant/s are unsuccessful an Abandonment Notice will be served on the tenant/s at the address of the property. The Notice will either be served by two members of staff, who will sign, date and witness the serving of this notice or be sent by recorded delivery.

The notice will state:

- That the landlord has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as his / her home.

- Require the tenant to inform the Association in writing within 4 weeks of service of the notice if the tenant intends to occupy the house as their home. This should either be hand delivered to the Association's office or sent by recorded delivery for proof of delivery/compliance.
  
  - Inform the tenant that, if it appears to the landlord at the end of the 4 week period that the tenant does not intend to occupy the house, the tenancy will be ended with immediate effect by service of a second notice.
- 3.2 During the 4 week period following the serving of the notice, the Association will make sufficient enquiries to be satisfied that the house is unoccupied and the tenant does not intend to occupy it as their home. These enquiries may include contacting the tenant's family, neighbours, or employers. Staff should enquire with Glasgow City Council, Police Scotland, Scottish Prison Service, and NHS admissions in every case to check if the tenant is in custody or in hospital, or has made a homeless application.
- 3.3 As there may be valid reasons for the house being unoccupied for a period of time, the Association will endeavour to be satisfied that the house is unoccupied and the tenant does not intend to re-occupy it.
- 3.4 On the 29<sup>th</sup> day following the 1<sup>st</sup> notice being served the Association will serve a further notice confirming the finalisation of the abandonment process if it remains satisfied that the house is unoccupied and the tenant does not intend to re-occupy it. Access will be gained and locks changed the following day, ending the tenancy.
- 3.5 If the tenant contacts the Association during the 4 week period of the first notice, the Association will advise the tenant of their obligation to either end the tenancy in the usual manner, or to confirm in writing that they intend to stay in the property as their only or principal home.
- 3.6 If after 4 weeks, there is no contact by the tenant, a further final notice will be served bringing the tenancy to an end with immediate effect.
- 3.7 All abandonments must be signed off by the Chief Executive or Deputy Chief Executive prior to property being repossessed.

#### **4. POSSESSIONS IN ABANDONED PROPERTY**

- 4.1 The Association will take an inventory and assess the value of any belongings left in the property. Where the value if sold, is greater than the

cost of storage and any outstanding rent arrears, the belongings should be removed and stored for up to a maximum of 6 months.

- 4.2 Where the former tenant makes contact within the 6 months period, they will be required to pay any rent arrears, outstanding rechargeable repairs, costs of securing the property and restoring it to a lettable condition and/or storage costs.
- 4.3 In the event of the goods not being claimed within the 6 month period, they may be disposed of at the Association's discretion, including sale. Any funds received from the sale will be used towards the costs described in 4.2 above.
- 4.4 Section 19 of the Housing (Scotland) Act 2001 gives a tenant whose house has been repossessed the right of appeal to the court by summary application. This must be within 6 months from the date of termination.

## **5. ABANDONMENT BY A JOINT TENANT**

- 5.1 The Housing (Scotland) Act 2001 introduced new legislation concerning joint tenancies where an Association has reasonable grounds to believe that a joint tenant has abandoned their tenancy.
- 5.2 Housing Management staff will make all reasonable enquiries to satisfy that the abandoning tenant is not occupying the house and does not intend to occupy it as their principal home. Staff will seek to contact the joint tenant at their present address inviting them to put in writing their intention to end their interest in our property since they are no longer resident.
- 5.3 Where the Association is unable to make contact with the joint tenant or if the joint tenant does not put in writing to the Association their intention to end their interest in our property, the Association will serve an Abandonment Notice on the interest of the joint tenant.

This notice will state:

- That we believe that the joint tenant has abandoned their interest in the property and that they have ceased to occupy the property as their only or principal home.
- That they must contact the Association in writing to confirm that they intend to return to occupy the property within 4 weeks of the service of the notice.
- That should no contact be made, a further notice will be served which will bring, after a further 28 days, their interest in the property to an end.
- That only their interest in the tenancy will end and the tenancy will continue and be held in the name of the remaining tenant only.

- 5.4 Under Section 20 of the Housing (Scotland) Act 2001, a tenant who has had their interest in the property terminated has eight weeks to appeal against the decision.
- 5.5 The exception of the above will be where there is a dispute as to who should live in the property under the Matrimonial Homes Act. No abandonment notice should be served in these circumstances. In such cases, where the tenants cannot agree, a court will decide who should keep the tenancy and the Association will be notified by the court.

## 6. CASES WHICH ARE NOT ABANDONMENTS

While a property may appear abandoned there are a few cases where the abandonment process should not be used:

- **The property is deemed to be unoccupied only where there is no one residing within:** For the purposes of abandonment proceedings, it is irrelevant who is residing in the property. Even if the property is being inhabited by sub-tenants or friends and family, then it is deemed to be occupied and abandonment proceedings cannot be used.
- **Where there are ongoing court proceedings in respect of that property:** For example, due to rent arrears. Abandonment proceedings cannot be used to recover a property where the tenant is defending a court action to recover the property. If a court action for recovery of possession is being defended, that would suggest that there is an intention to occupy.
- **Where the tenant is known to be residing elsewhere temporarily:** such as in prison, in a care home, or is on holiday abroad, the landlord cannot assume that the tenant has no intention to reside in the property. The abandonment procedure should not be used in those situations.

## 7. ABANDONMENT REGISTER

Where a property has been repossessed under the Abandonment Procedure this will be noted in an Abandonment Register.

This register will be available for inspection on request for up to five years after the abandonment of the property.

Where an abandonment notice has been served on a joint tenant or qualifying occupier this should also be recorded in the register.

## **8. RIGHT OF APPEAL**

Any tenant who feels aggrieved by their treatment under this Policy can ask for a copy of the Associations Complaints Handling Policy which is available at the Associations office. Following the exhaustion of this process tenants also have a right to complain to the Public Services Ombudsman. The Complaints Handling Policy details the way in which tenants can complain and the timescales for responding.

Tenants wishing to appeal should note that they do not necessarily have to go through the internal appeal process as they have a legal right of appeal and should obtain legal representation to assist them in this process. Any tenant of the Association whose tenancy has been repossessed in accordance with this Abandoned Tenancies Policy, has a right of appeal to court within 6 months. Where the court finds that the landlord acted wrongly or unreasonably it must order the tenancy to continue or direct the landlord to provide other suitable accommodation.