

ABANDONED TENANCIES POLICY

1 Introduction

- 1.1 Where Ayrshire Housing (the “association”) has reasonable grounds for believing that one of its Scottish Secure Tenancies is unoccupied, and the tenant does not intend to occupy it as their home, it may take possession of the house in accordance with the terms of the Housing (Scotland) Act 2001 and the Tenancy Agreement.
- 1.2 The association may also force entry to the house and secure it and any fittings, fixtures or furniture against vandalism.
- 1.3 The association may also act to bring to an end a joint tenant’s interest in a Scottish Secure Tenancy if it appears that the joint tenant has abandoned the tenancy in accordance with the terms of the Housing (Scotland) Act 2001 Section 20.

2 Aims and Objectives of the Policy

- 2.1 The overall aim of this policy is to identify, repossess and re-let properties as quickly as possible in order to minimise the rent loss resulting from abandoned properties. The specific objectives of this policy are to:
 - determine quickly whether a property is abandoned;
 - minimise the time a property is unoccupied and re-let the property quickly;
 - reduce estate management problems arising from an unoccupied property;
 - minimise rent loss and rent arrears;
 - protect the rights of tenants and the association when repossessing a property.

3 Legal Framework

- 3.1 The provisions and implementing of the Abandoned Tenancies Policy aim to comply with the following legislation and statutory guidance:
 - Housing (Scotland) Act 2001;
 - Housing (Scotland) Act 2014;
 - Scottish Secure Tenancy (Abandoned Property) Order 2002;
 - General Data Protection Regulations (GDPR), tailored by the Data Protection Act 2018;
 - Human Rights Act 1998;
 - Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - Scottish Secure and Short Scottish Secure Tenancy Agreement;
 - The Scottish Social Housing Charter;

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- Equalities Act 2010.

3.2 Related Policies and procedures which complement this policy include:

- Void Policy and Procedures;
- Estate Management Policy and Procedures;
- Gas Safety Management Policy and Procedures;
- Recharges Policy and Procedures.

ABANDONED TENANCIES PROCEDURES

PART A – INVESTIGATION AND SERVICE OF 1ST NOTICE

- 4.1 Where Ayrshire Housing is notified or suspects that a property has been abandoned, every attempt should be made to satisfy itself that the house is unoccupied and that the tenant has no intentions of re-occupying the property. The Housing Officer must initially send a Pre-Abandonment Notice to the tenant and allow 7 days for the tenant to respond, unless there is sufficient evidence to suggest that the property is empty, and the tenant has moved out. During this period the Housing Officer must complete the Abandonment House Checklist Part A and carry out all relevant checks where possible to establish if the tenant has abandoned the tenancy.
- 4.2 Once all relative checks have been completed, the Housing Officer will pass the Abandonment House Checklist to the Senior Housing Officer for signed approval to proceed with service of the 1st Notice.
- 4.3 The 1st Notice, Abandoned Notice 1 must be served by the Housing Officer in the presence of another officer providing 28 days clear notice to end the tenancy. In the case of a Joint Tenancy, an Abandoned House Joint Tenancy Notice 1 must be served by the Housing Officer in the presence of another officer providing 28 days clear notice.
- 4.4 If the property is insecure, a lock change should be arranged at point of 1st Notice service. In these circumstances the Notice should be served by the Housing Officer and a Maintenance Officer to allow a pre-inspection of the property. If the tenant has left personal belongings and/or items of furniture, a full inventory should be taken along with photographic evidence, and an assessment of the value of these items should be made at that time, to determine whether we require to store the belongings for 6 months or dispose of the items as per The Scottish Secure Tenancies (Abandoned Property) Order 2002. During this inspection the officers should determine whether a needle sweep is required following the service of the second notice. If there is any evidence of needles, no items should be touched by the officers in attendance.

Where personal items and goods are found in an abandoned property the association will immediately write to the tenant advising that the items are available for collection and give the tenant 28 days to collect them.

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At the end of the 28 day period the association will either arrange for the disposal or storage of the goods for up to 6 months providing the storage costs and any outstanding rent arrears are not greater than the value of the goods.

- 4.5 The storage of any items should be provisionally arranged at the service of the 1st Notice to reduce void times.
- 4.5 The Housing Officer must register this action on the Abandoned Properties Register (CCH 792) and must make a diary entry on SDM (Diary code: Other and Action code: AB1). This should be entered as 'awaiting' in the 'Follow-on Information' section creating a 'pop up' on SDM to highlight that this action is being taken.

CANCELLATION OF ABANDONMENT AT 1ST NOTICE STAGE

- 5.1 If the tenant(s) make contact, the Housing Officer must arrange a meeting with the tenant at the property and obtain a signed statement from the tenant confirming that they fully intend to occupy the property in accordance with their tenancy agreement.
- 5.2 The Housing Officer must be satisfied that the tenant is occupying the property and must continue to monitor the tenancy for as long as necessary, carrying out follow up visits on a regular basis.
- 5.3 Should the tenant(s) not satisfy the Housing Officer that they are in full occupancy of the property i.e. if the gas remains capped, continuous failure to be present at pre-arranged meetings or there is no engagement with follow up support within the 28 day period of the 1st Notice, the Abandonment Procedure will not be cancelled and the 2nd Notice will be served as planned.
- 5.4 Where the Housing Officer is satisfied that the tenant(s) are in full occupancy of the property, the Abandonment Procedure should be cancelled.
- 5.5 The Abandoned House Checklist must be updated.
- 5.6 The Abandoned Register must be updated.
- 5.7 SDM must be updated (Diary code: Other and Action code: ABC).
- 5.8 The Housing Assistant responsible for voids management and allocations and Maintenance Officer must be notified of the cancellation by email immediately.
- 5.9 The lock change must be cancelled immediately.
- 5.10 The Abandonment paperwork must then be filed in the tenant's file in CCH.

PART B – SERVICE OF 2ND NOTICE TO END THE TENANCY

- 6.1 The Housing Officer should update the Abandoned House Checklist with details of any contact or information obtained following the initial investigations, before passing the checklist to the Senior Housing Officer for signed approval to serve the 2nd Notice.
- 6.2 The 2nd Notice must be served by a Housing Officer and a Maintenance Officer so that a full void inspection can be carried out.
- 6.3 If the property has personal belongings and/or other goods left in it, then a full inventory should be taken along with photographic evidence, and an assessment of the value of these items should be made to determine whether we require to store the belongings for 6 months or dispose them as per The Scottish Secure Tenancies (Abandoned Property) Order 2002.

Ayrshire Housing will only store items where their value exceeds the costs to the association for storing them as well as any outstanding arrears owed by the tenant.

During this inspection the officers should determine whether a needle sweep is required following the service of the second notice and ensure that an appropriate contractor is advised of this requirement.

- 6.4 If any items require to be stored and no previous arrangements have been made, the Maintenance Officer must arrange this immediately. The cost of storage of any items will be recharged to the outgoing tenant in accordance with the association's Rechargeable Repairs Policy.
- 6.5 The Housing Officer must diary a reminder, that if stored items are not claimed within 6 months they must email the Maintenance Officer to arrange the disposal of these items.
- 6.6 If there is anything in the property which causes concerns around potential criminal activity, for example illegal drugs, dangerous weapons, illegal occupation, or stolen property, this will be reported to the Police immediately. If there are any abandoned animals within the property, this will be reported to the Scottish Prevention of Cruelty to Animals (SPCA) and removal will be arranged.
- 6.7 Where valuable removable items are identified including large sums of cash or jewellery, these should be photographed in detail and jointly signed off in the inventory. Cash should be deposited in the association's bank and details recorded in the suspense account on the association's rent accounting system (SDM). Other valuable items such as jewellery should be handed in to the local police station and reported as found property.
- 6.8 The inventory and photographs should be saved and clearly identified as information relating to the abandonment of the tenancy on CCH (tenants file) for future reference.

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- 6.9 No member of staff will touch any hazardous items such as drugs, used needles or dangerous weapons found in an abandoned property.
- 6.10 Should the former tenant wish to collect any property in storage, they will require to repay any storage costs, prior to uplifting these goods. The former tenant will require to arrange their own transport to collect these items from the place of storage.
- 6.11 Following the lock change the Housing Officers should update the Abandoned Properties Register ID 792 and SDM (OTH – AB2) and return the keys to the Housing Assistant who will end the tenancy and commence the void procedure.
- 6.12 Any rechargeable repairs identified at the end of the tenancy will be recovered in accordance with the Rechargeable Repairs Procedure.

ABANDONMENT BY A JOINT TENANT

- 7.1 The Housing Officer must make reasonable enquiries to evidence claims that the joint tenant is no longer residing in the property and discuss their findings with the Senior Housing Officer. Providing there is sufficient evidence, the Senior Housing Officer will instruct the Housing Officer to serve the appropriate notices, in accordance with Housing (Scotland) Act 2001 Section 20.
- The first notice must be served by the Housing Officer in the presence of another Housing or Maintenance Officer and a copy of this notice must be addressed and served to the other joint tenant at the same time, allowing a period of 4 weeks for the joint tenant who has potentially abandoned the property to respond.
 - The second notice must be served by the Housing Officer in the presence of another Housing or Maintenance Officer advising that if there is no appropriate response within a period of 8 weeks the joint tenancy will end. A copy of this notice addressed to the other joint tenant must also be hand delivered at the same time.

If there is no response from the joint tenant within the stated notice period, the Housing Officer will end the Joint Tenancy on SDM and note this in the diary. The remaining tenant should be notified in writing that they are now the sole tenant. The remaining tenant will not require to sign a new tenancy agreement.

TENANTS RIGHT TO RECOURSE

- 8.1 Under Section 19 of the Housing (Scotland) Act 2001, a tenant who is aggrieved by the termination of their tenancy under Section 18 (2) may raise legal proceedings within 6 months after the end of tenancy date.

- 8.2 Tenants have 6 months from the date of repossession in which to complain to the Sheriff Court.
- 8.3 If the Court holds that Ayrshire Housing failed to comply with the statutory procedures, or did not have reasonable grounds for finding that the property was abandoned, the Court may instruct the tenancy to continue (if the house has not been re-let) or, alternatively, will ensure that Ayrshire Housing makes alternative accommodation available to the tenant.

REMAINING OCCUPANT NOT A TENANT/JOINT TENANT

- 9.1 If a tenant abandons their property and leaves behind any occupant(s) over the age of sixteen, who is not a tenant, the property is not deemed in law as being abandoned as it continues to be occupied. Legal advice should be sought from the association's solicitors in such cases. Whilst enquiries are being made, no rent, housing benefit or universal housing costs payments should be taken from the remaining occupants during this period.

Any payments which are received by the association should be paid into a suspense account and not into the rent account.

- 9.2 Depending on their relationship to the tenant the person remaining in the property may have occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. Legal advice should be sought in such circumstances.

EQUALITIES AND HUMAN RIGHTS

- 10.1 Ayrshire Housing is committed to equal and fair treatment of all sections of the community. Accordingly, no person will be discriminated against during the implementation of this policy on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In delivering this policy, Ayrshire Housing's staff will comply fully with the requirements of the association's Equalities and Human Rights Policy.

COMPLAINTS

- 11.1 Any individual who is dissatisfied with the service experienced should be encouraged to provide feedback. Complaints regarding the implementation of this policy will be dealt with in accordance with the association's corporate Customer Complaints Policy and associated procedures.