



CADDER HOUSING ASSOCIATION

ABANDONMENT POLICY & PROCEDURES

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Cadder Housing Association Abandonment Policy

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1.0 Introduction

- 1.1 The purpose of this policy and procedural note is to outline the procedures that should be followed when dealing with abandoned houses. These abandonment procedures will allow the Association to ascertain whether the house is being occupied / unoccupied and that the tenant is using the property as their “Principal Home”. This is necessary to enable the Association to recover possession of the house and take the necessary steps to protect the property.
- 1.2 The Housing (Scotland) Act 2001 outlines the definition of abandonment and incorporates good practice procedures that landlords should follow if wishing to recover possession of an abandoned house.

2.0 Legislation

Housing (Scotland) Act 2001

- 2.1 Section 17 of the Housing (Scotland) Act 2001 allows a “**landlord to recover possession of a house which they believe has been abandoned**”, by the tenant, where the landlord believes that the house is unoccupied and believes that the tenant does not intend to occupy it as the tenant’s principal home.
- 2.2 The Act also confirms that “**landlords are allowed to enter the house at any time to make the house and any fixtures and fittings secure against vandalism**”, where a landlord has reasonable grounds for believing that a tenant has abandoned the tenancy.
- 2.3 The Abandonment procedures have been prepared in full recognition of the current legislation and the relevant Statutory Instrument relating to the Housing (Scotland) Act 2001 for Abandoned Property, Scottish Statutory Instrument 2002 No. 313, The Scottish Secure Tenancies (Abandoned Property) Order 2002. (Appendix 1)

2.4 Other Legislative Areas

This policy also complies with the following legislation:

Scottish Secure Tenancy – the Association’s tenancy agreement contains specific conditions in relation to the tenant’s requirement to occupy the property as his/her principal home (sections 2.1 and 6.4)

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Data Protection Act 1998 - The Association will adhere to the Data Protection Act 1998 in order to ensure that information provided by an applicant or sought by the Association is relevant only to assessing their housing need and is treated in the strictest confidence. Under the provisions of the Data Protection Act 1998 individuals are entitled to request personal data which is held by the Association. The Association may make a charge covering the administrative costs of providing this information.

Equality Act 2010 - The Association within the operation of its Allocations Policy will comply with the Equality Act which protects persons from being discriminated against.

3.0 Establishing if a House has been Abandoned

3.1 Staff must have regard to the welfare, safety and rights of tenants when carrying out the abandoned house procedure. They must also be fully aware of the duty towards tenants and residents who live in the vicinity of the abandoned house, where a failure to respond may result in there being increased vulnerability.

3.2 All staff must have regard to the Association's Health & Safety Policy to avoid putting themselves at risk when checking abandoned houses.

3.3 There are many reasons for there to be suspicion that properties are not being occupied, these are: -

- Reports from neighbours
- Accruing rent arrears
- Cancellation of housing benefit
- Visual Appearance
- Non response to Association correspondence.

3.4 Staff should undertake checks to establish whether the property has been abandoned. The following is a list of checks / warning signs. This list is not exhaustive: -

- Does the house look abandoned (look through windows and letterbox)
- Talk to neighbours about when the last time they saw the tenant
- Check the rent account for the last payment made and method of payment.
- Check with Glasgow City Council to ascertain whether the tenant has been re-housed
- Make contact with tenant's relatives / emergency contacts

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- Check with Housing Benefit the reason for the Housing Benefit being cancelled i.e. tenant claiming from another property
- Make contact with any known support agencies that the tenant has been engaged with
- Make reasonable enquiries to check if the tenant has been imprisoned (An enquiry referral should be submitted to Community Safety Glasgow)
- Check with the Association's Technical Services Section to ascertain if the tenant has requested any recent repairs
- Other landlords
- Contact with the tenant's employer (if known)

3.5 The Association is entitled to enter the property at any time, by force, if necessary in order to secure the property and any fittings, fixtures against vandalism, frost damage or water penetration where it is reasonable to believe that the property has been abandoned. At this stage the Housing Services Officer should make decision on the vulnerability of the property and order the appropriate works, if necessary i.e. house security, drain down of water or services isolated.

3.6 Once staff are reasonably satisfied that the house is unoccupied the **notice of termination of Scottish Secure Tenancy** (Annex 1) should be served on the tenant at the property. This notice can be served personally or by recorded delivery. Staff should be mindful of any preferred first language other than English that the tenant may have and arrange for the notice to be composed in that language. Equally, regard should also be given to tenants with known visual impairments and where established, the notice should be composed in a suitable format (larger text, Braille).

In the event that staff personally serve the abandonment notice they should complete the certificate of delivery form (Annex 3), all stages should be witnessed by a colleague. The Housing Services Officer should e-mail an internal memo to Maintenance and Reception departments to request that the tenant be referred to them if the tenant contacts the office. (Annex 6). The Housing Services Officer should retain copies of all correspondence and update the abandonment register (Annex 4).

3.7 Whilst the abandonment notice is active (28 days) the Housing Services Officer should only inspect the property where the property has been secured, otherwise they **must** wait until the 28 day notice has expired.

3.8 If the property is being occupied by a third party (i.e. someone who is not the tenant) then the abandonment procedure does not apply

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- a) If the person in the house is the spouse / co-habitee of the tenant, then they may have occupancy rights to the property under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. In addition, a child of the tenant who is over 16 and has lived in the house for 12 months may be entitled to the succeed to the tenancy
- b) If the person is not the spouse, partner or child who is eligible to succeed to the tenancy then they do not have any right to occupy the house and should be served a notice of proceedings for recovery of possession. (Staff should liase closely with Association's solicitors for guidance on appropriate course of action)

3.9 Where the tenant contacts the Association within the 4 week notice period and confirms their intention to occupy the tenancy as their principal home, the abandonment action should be cancelled. The Housing Services Officer should arrange for a home visit to be carried out so as to determine that the tenant is occupying the property.

3.10 Joint Tenants

3.10.1 Section 20 of the Act gives landlords the ability to take action to end a joint tenant's interest in the tenancy where they believe that the joint tenant has abandoned the tenancy. The Association must serve a notice on the joint tenant:

- a) where we have reason to believe the abandoning tenant is not occupying the house and does not intend to occupy the house;
- b) where similar to the normal abandonment procedure the joint tenant is required to confirm, in writing, within four weeks of serving the notice if the abandoned tenant intends to occupy the house;
- c) and inform the abandoning tenant that their interest in the tenancy will be brought to an end if the Association believes that the tenant does not intend to occupy the property.

3.10.2 At the end of the four week period where the Association's enquiries lead it to believe that the tenant does not intend to occupy the property, **a further notice must be served informing the tenant that their interest in the tenancy will come to an end on a date eight weeks or later after the serving of this second notice.** (All notices should be copied to the remaining joint tenants).

4.0 Abandoned Property Notices

4.1 There are two notices that Landlords are required to serve on a tenant before the tenancy can be ended and the house recovered. The notice to terminate the Scottish Secure Tenancy (Annex 1) and the termination of Scottish Secure Tenancy (Annex 2).

The Association will also send a letter to the tenant in the period between the serving of the abandonment notices as part of our on-going efforts to trace and contact the tenant.

4.2 The Notice to Terminate the Scottish Secure Tenancy

- a) This notice must be served on the tenant at the address that appears to be abandoned and should be hand delivered by two members of staff.
- b) A copy of the Notice should be kept in the house file. After serving the notice both officers should complete the certificate of delivery form. The Housing Services Officer should update the abandonment register.
- c) If the Housing Services Officer has secured the property and in turn, has inspected the property he/she should carryout an inventory of the property and issue the tenant with notification on the decision about the storage of their belongings. In the event the property has not been secured the notification of belongings should be served after the property has been repossessed.

4.3 Termination of Scottish Secure Tenancy

- 4.3.1 If the tenant fails to respond in writing to the notice to terminate the tenancy to confirm that they intend to occupy the dwelling house as his/her home within the four week since the first Notice was served, then the second Notice should be served. (the second notice should be served in the same way as the first notice – see section 4.2) The serving of the second notice formally ends the tenancy and is the date of leaving for the tenancy. The Housing Services Assistant should then allow for 24 hours before confirming the end of tenancy via the Association's computerised system and initiating void property procedures.

4.4 Repossession of the House

- 4.4.1 The locks should be changed and the house repossessed. The house should be inspected and the Housing Services Officer should consider whether the goods and possessions should be stored or the property cleared and void procedures instigated (see section 7.0 – storage of property). At the inspection the Technical Services Officer should assess whether the water, gas etc should be turned off where there is potential for damage whilst the property is empty.

The Housing Services Officer should take photographs of the abandoned property and in particular household and personal items left in the property.

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As part of the void process, the Technical Services Officer should identify works to be re-charged to the former tenant, such as changing of locks, property clearance and damage to fitments. Decisions made in respect of clearing items from the property should be made by the Housing Officer – see 7.1.

5.0 Tenant's Recourse to Court

5.1 Where a tenant is aggrieved by the termination of tenancy under section 18 of the Housing (Scotland) Act 2001 they can raise proceedings under Section 19 in the Sheriff Court within six months of the termination date. Detailed records must therefore be kept of all checks carried out and notices delivered.

5.2 If the Sheriff finds that Cadder Housing Association

- a) failed to comply with the provisions of the Act or
- b) did not have reasonable grounds for finding that the dwelling house was unoccupied or

the Sheriff can order that the Scottish Secure Tenancy continue. Where the house has been relet by the Association the Sheriff will instruct the Association to provide other suitable accommodation. Suitable accommodation is defined in Part 2 of schedule 2 of the Act.

5.3 Where a joint tenant is aggrieved by the termination of their interest in the tenancy they can also raise proceedings under Section 21 in the Sheriff Court, although within eight weeks from the termination date.

5.3.1 Where the Sheriff finds that Cadder Housing Association

- a) failed to comply with the provisions of the Act or
- b) did not have reasonable grounds for finding that the tenant had abandoned the property or
- c) the landlord was in error and the tenant had good reason, such as illness, for failing to notify the Association the court must rule the notices served by the Association as not valid

the Sheriff can order the Association to reinstate the tenant or where it is unreasonable to do this the court must direct the landlord to provide suitable alternative accommodation. Again, suitable accommodation is defined in Part 2 of schedule 2 of the Act.

6.0 Property Found in Abandoned House

- 6.1 A full inventory of all goods left in an abandoned house should be carried out by two members of staff, one signing the inventory and the other signing as witness (Annex 5). Photographic evidence and comments on the condition of the property and its contents should be taken (The comments sheet(s) should be signed and dated by both officers).
- 6.2 Where the house contents are filthy and/or infested staff should make an inventory only of what can be seen. A note should then be made on the inventory that only a visual inspection was made along with the reason for this.
- 6.3 Staff should not touch any hazardous items such as drugs, used needles or dangerous weapons which are found in an abandoned house but should contact the police immediately.

7.0 Storage of Property

- 7.1 The Housing Services Officer should make the necessary arrangements to store furniture etc as long as the estimated value of the property is greater than the cost of storing it plus any rent or other arrears that the tenant owes to the Association in relation to their tenancy.
- 7.1.1 The decision on the length of time to store household items should be supported by the financial assessment. It is recommended that items are not stored for in excess of 6 months or for a period where the cumulative cost of storage and debts owing to the association is greater than the value of the property stored. There are relevant memos to/from housing management and maintenance relating to the storage of items in Annex 8a and 8b.
- 7.2 The Association will deliver any such property to the tenant as long as they make full payment of the costs for storing it, and have made arrangements for and paid for the delivery. The Association will dispose of any such property if no arrangements have been made for payment and delivery within a given period.
- 7.3 At the end of the storage period the Association will make efforts to sell the goods to reputable second hand furniture dealers. The proceeds received from the sale of the property items will pay for the costs or debt owed to the Association in the following order: -
- Storage Costs
 - Rent Account
 - Rechargeable Repairs Account
 - Court Expenses Account

Thereafter, any surplus will be refunded to the tenant.

8.0 Monitoring / Register of Abandoned Houses

- 8.1 A register will be kept of all abandoned houses and properties will remain on the register for at least a calendar year. (Annex 4). A register of abandoned houses in which property has been found will be kept, properties will remain on the list for a period not less than 5 years from the date of repossession. This register will be available at all times for public inspection.
- 8.2 The Housing Services Officer should ensure that the SDM diary system is updated to reflect each stage of the abandonment process.
- 8.3 A summary cover sheet should be completed for all abandoned properties and all notices, certificates of service and inventory sheet(s) should be attached to this sheet (Annex 7).
- 8.4 All communications (internal and to the tenant) should be saved to the tenant's file.

9.0 Reporting, Audit and Review

Reporting

- 9.1 The Committee will be provided with performance statistical information on the abandonment process in the quarterly housing management reports that are presented to the Management Committee.

Audit

- 9.2 There will be a bi-annual self assessment audit carried out that will assess the properties repossessed through the abandonment procedures in the preceding financial year were successfully implemented by staff. The findings of the audit will be presented to staff at the Housing Management team meeting, as well as reported to the Management Committee.

Review

- 9.3 This Procedure will be reviewed in June 2019, or earlier to take account of: -
- Legislative, regulatory and good practice requirements
 - Association performance
 - the views of tenants and staff