



# **CADDER HOUSING ASSOCIATION**

## **ABANDONED PROPERTIES POLICY & PROCEDURE**

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# **Cadder Housing Association Ltd**

## **Abandonment Policy & Procedures**

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## **1.0 Introduction**

- 1.1 The purpose of this policy and procedure is to outline the processes and legislative areas that should be followed when dealing with abandoned properties belonging to the Association. Under the terms of the Scottish Secure Tenancy Agreement, tenants have a duty to occupy the property. Where required, these procedures will allow the Association to ascertain whether the house is being occupied / unoccupied and if the tenant is using the property as their principal home.
- 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 Policy Aims**

- 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 whether a property is abandoned;
  - make the best use of its housing stock by ensuring empty abandoned properties are able to be re-let quickly and minimise the time a property is unoccupied;
  - reduce estate management problems arising from an unoccupied property;
  - minimise the potential rent loss;
  - mitigate against property vandalism costs; and
  - protect the rights of tenants and the Association when repossessing a property
- 2.2 The policy and procedure aims to ensure that a uniformed and professional approach is adopted throughout the organisation and the service delivered is compliant with legislation and best practice.

## **3.0 Legislation**

### Housing (Scotland) Act 2001

- 3.1 Under Section 17 & 18 of the Housing (Scotland) Act 2001 Cadder Housing Association may terminate a Scottish Secure Tenancy if it has reasonable grounds for believing that:
- The house is unoccupied; and

- believes that the tenant does not intend to occupy it as the tenant's principal home.
- 3.1.1 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. To facilitate this the landlord may force open doors and locked places such as windows, outhouses and cupboards;
- 3.1.2 It should be noted that the statutory abandonment procedure in sub-section 17 - 21 of the Housing (Scotland) Act 2001 must not be used to coerce tenants to contact the Association, for example to discuss rent arrears. This is an improper use of the procedure.
- 3.2 The Scottish Secure Tenancies (Abandoned Property) Order 2002
- 3.2.1 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.
- 3.3 Scottish Secure Tenancy
- 3.3.1 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)
- 3.4 Equality Act 2010
- 3.4.1 The Association within the operation of its Allocations Policy will comply with the Equality Act which protects persons from being discriminated against.

The characteristics that are protected by the Equality Act 2010 are:

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

3.4.2 Under the Equality Act, if you have one or more of these protected characteristics, it is also against the law to treat you the same as everyone else if this treatment will put you at a disadvantage.

3.4.3 Equalities is supported by Section 106 of the Housing (Scotland) 2001 Act, which states that landlords have a duty to encourage equal opportunities and provide services in a way that promotes equality

### 3.5 Matrimonial Homes (Family Protection) (Scotland) Act 1981

3.5.1 If the person remaining is the spouse of the tenant, then they may have occupancy rights to the property under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. In addition, a co-habitee, a son/daughter of the tenant who is over 16, or a carer may be entitled to succeed the tenancy. Such succession rights should be compliant with the Associations Allocations Policy.

### 3.6 Human Rights Act 1998

3.6.1 In accordance with articles 7 and 11 of the Human Rights Act 1998, the Association will have respect for tenants' private and family life. Actions that interfere with these rights may be open to challenge.

### 3.7 The Scottish Social Housing Charter

3.7.1 Section 31 of the Housing (Scotland) Act 2010 introduced the Scottish Social Housing Charter which sets the standards and outcomes that all Social landlords should aim to achieve when performing their housing activities. This policy adheres to the below Charter Outcomes:

**Outcome 1:** 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 6:** Tenants and other customers live in well-maintained neighborhoods where they feel safe.

**Outcome 11:** Tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provide directly by the landlord and by other organisations.

### 3.8 Data Protection Act 2018

3.8.1 The Association is fully committed to compliance with the requirements of the General Data Protection Regulations (GDPR).

There are eight principles of good information handling outlined in the Act that state that data must be:

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate
- Not kept for longer than is necessary
- Processed in line with your rights
- Secure
- Not transferred to other countries without adequate protection

#### **4.0 Establishing if a Property has been Abandoned**

4.1 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.

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

4.3 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.

4.4 The Association will write to the tenant using Abandonment Notices 1 and 2. However, the Association must act reasonably and be satisfied that all appropriate checks have been carried out to establish if 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
- 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
  - Contact with the tenant's employer (if known)
- 4.4.1 The abandonment 2 notice, which effectively ends the tenancy, must be approved for issue by a member of staff at grade 7 or above. This will help ensure that all required steps have been taken and that a correct decision has been made to terminate the tenancy.
- 4.5 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 Customer Services Officer / Coordinator 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.
- 4.6 Once staff are satisfied that the house is unoccupied an Abandonment of Tenancy Notice should be served at the property. Staff should be mindful of any preferred first language that the tenant may have and arrange for the notice to be issued 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).
- 4.6.1 Where an abandonment notice is served, staff should complete a certificate of delivery form, which is required to be witnessed by the co-attending staff member. The Customer Service Officer / Coordinator should e-mail Customer Services staff to request that the tenant be referred to the appropriate staff member should the tenant contact the office. The relevant staff member should retain copies of all correspondence and update the abandonment register.
- 4.7 Whilst the abandonment notice is active (28 days) the Customer Service Officer / Co-ordinator should only inspect the property where the property has been secured, otherwise they must wait until the 28 day notice has expired. The abandonment notice will become valid the day after it has been served to ensure the statutory period has elapsed.
- 4.8 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:



- 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 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)
- 4.9 Where the tenant contacts the Association within the four week notice period and confirms their intention to occupy the tenancy as their principal home, the abandonment action should be cancelled. The Customer Services Officer / Co-ordinator should arrange for a home visit to be carried out so as to determine that the tenant is occupying the property and identify if any tenancy support is required to sustain the tenancy.
- 4.10 On occasions a tenant may come into the office to hand keys in. In these circumstances unless a Notice of Termination has been signed or the tenant puts their notice in writing the Abandonment procedure should be followed.

#### Joint Tenants

- 4.11 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.
- 4.11.1 At the end of the four week period and 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). The Association will calculate 4 and 8 weeks plus one day from the original notice date to allow for the full period to elapse.

4.11.2 The remaining tenant(s) continue as the tenant. The tenancy does not end but the tenancy details will be amended to show that the abandoning tenant has ended as part of both the tenancy and the household and is no longer attached to the tenancy. Any debts remain on the account and are recoverable from the remaining tenant(s).

## **5.0 Abandoned Property Notices**

5.1 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 and the termination of Scottish Secure Tenancy.

5.1.1 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.

## **5.2 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 retained to the house file. After serving the notice both officers should complete the certificate of delivery form. The Customer Service Officer / Coordinator should update the abandonment register.
- c) If the Customer Service Officer / Coordinator has secured the property and in turn, inspected the property the staff member should carry out an inventory of the property and save this to the house file.

## **5.3 Termination of Scottish Secure Tenancy**

5.3.1 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 4.6.1) The serving of the second notice formally ends the tenancy and is the date of leaving for the tenancy. The Customer Service Co-ordinator should then allow for 24 hours before confirming the end of tenancy via the Association's computerised system and initiating void property procedures.

## **5.4 Repossession of the House**

5.4.1 The locks should be changed and the property repossessed. The property should be inspected and the Customer Service Officer / Coordinator should consider whether the goods and possessions should be stored or the property cleared and void procedures instigated (see section 7 –

Property found in property). At the inspection staff should assess whether the water, gas etc. should be turned off where there is potential for damage whilst the property is empty.

5.4.2 The Customer Services Officer / Coordinator should take photographs of the abandoned property and in particular household and personal items left in the property. These should be saved to the house file.

5.4.3 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 Customer Services Officer /Coordinator.

## **6.0 Tenant's Recourse to Court**

6.1 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.

6.2 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 abandoned.

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

6.3 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, within eight weeks from the termination date.

## **7.0 Property Found in Abandoned House**

7.1 As required by the Scottish Secure Tenancies (Abandonment Property) Order 2002 we will take into our possession and safekeeping any property found within the house as long as the estimated value of the property is greater than the cost of storing plus any rent or other arrears that the tenant owes to the Association in relation to their tenancy.

- 7.2 The decision on the length of time to store household items should be supported by a 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.
- 7.3 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. Photographic evidence and comments on the condition of the property and its contents should be taken. An Inventory should be signed and dated by both attending officers.
- 7.4 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.
- 7.5 Where the Association take possession of any property the Customer Services Officer / Coordinator must service a notice on the tenant informing the tenant the property is in the Association's possession and that belongings may be collected from the Association. The staff member must attach a copy of the inventory to the notice.
- 7.6 The notice should also state that the tenant will be charged for the Association's costs incurred in the removal of storage and also inform the tenant that if it is not collected within the time specified, it will be disposed of by the Association in accordance with the provisions of the Order.
- 7.7 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.
- 7.8 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 Properties**

- 8.1 A register will be kept of all abandoned houses and properties will remain on the register for at least a calendar year. 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 Customer Services Officer / Coordinator 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, detailed record of all enquires / actions and inventory sheet should be attached to this sheet.
- 8.4 All communications should be saved to the tenant's file.

## **9.0 Reporting, Audit and Review**

### **9.1 Reporting**

An annual report to the Management Committee in the form of the Annual Return on the Charter will be provided on the following:

- number of tenancies terminated following abandonments;
- Percentage of new tenancies sustained for more than a year, by source of let;
- Percentage of rent due lost through properties being empty during the last year; and
- Average length of time taken to re-let properties in the last year

### **9.2 Audit**

The Association will carry out an audit of properties that have been terminated through the abandonment process. Audits will be carried out every three years and findings will be presented to staff and Committee.

### **9.3 Review**

The Abandonment Policy and Procedure will be reviewed in September 2022 or earlier to take account of:

- Legislative, regulatory and good practice requirements
- Association performance
- the views of tenants and staff