



Ferguslie Park
Housing Association

Abandonment Policy Draft

Date Approved by the
Management Board

22 April 2020
Signed:

Chairperson

Date of Next Review

April 2023

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1. Introduction

The Housing (Scotland) Act 2001, Part 2, Chapter 1, Section 17 advises that 'Abandoned tenancies applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that –

- (a) the house is unoccupied, and
- (b) the tenant does not intend to occupy it as the tenant's home.'

Ferguslie Park Housing Association wishes to ensure that our housing stock is used as effectively and efficiently as possible.

By identifying abandoned properties swiftly, the Association can take the appropriate steps to have the property re-let.

2. Aims and Objectives

The overall aim of this policy is to ensure that Ferguslie Park Housing Association is managing its housing stock effectively and efficiently.

It is essential that any properties which are not being used by residents as their main or principal home are identified, and the appropriate steps are taken to have the unoccupied property repossessed and re-let to meet the needs of our housing applicants.

Ferguslie Park Housing Association will:

- Make the best use of our 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
- Determine quickly when a property is abandoned
- Minimise the potential void rent loss
- Minimise costs to the Association e.g. repairs, storage of belongings etc.
- Protect the rights of tenants and the Association when repossessing a property.

3. Legal Provisions

The provisions and implementing of the Abandonment Policy aims to comply with the following legislation and statutory documents.

- Housing (Scotland) Act 2001
- Housing (Scotland) Act 2014
- Scottish Secure Tenancy (Abandoned Property) Order 2002
- General Data Protection Regulations
- Equality & Diversity Act 2010
- Matrimonial Homes (Family Protection) (Scotland) Act 1981
- Scottish Secure Tenancy and Short Scottish Secure Tenancy Agreement
- The Scottish Social Housing Charter

These provisions apply to both single and joint tenancies. They are as follows:

3.1 Single Tenancy

Where the Association has 'reasonable grounds' for believing that a property is unoccupied, and that the tenant does not intend to occupy it as his/her only or principal home, Chapter 1 Sections 17-19, Housing (Scotland) Act 2001 sets out the procedure to end the tenancy and repossess the property.

3.2 Joint Tenancy

Where the Association has reasonable grounds for believing that a joint tenant is not occupying the property and does not intend to occupy it as their only or principal home, Chapter 1 Sections 20-21, Housing (Scotland) Act 2001 detail the procedures for ending the joint tenancy.

4. Abandonment Notices for Single Tenancy

Where Ferguslie Park Housing Association has reasonable grounds for believing that a property is unoccupied and that the tenant does not intend to occupy it as his/her main or principal home, a Housing Services Officer will serve an Abandonment Notice against the tenant. This notice must:

- State that Ferguslie Park Housing Association has reason to believe the property is unoccupied and the tenant does not intend to occupy it as his/her main or principal home
- Require the tenant to inform Ferguslie Park Housing Association in writing within 28 days of the service of the notice if the tenant intends to occupy the property as his/her main or principal home
- Inform the tenant that if it appears to Ferguslie Park Housing Association at the end of the 28 days that the tenant does not intend to occupy the property, the tenancy will be ended with immediate effect by service of a second notice.

The legislation does not specify what inquiries should be carried out to satisfy that there are 'reasonable grounds.' However, before an abandonment notice is served, it is expected that checks such as visiting the property, checking with neighbours, police and Social Work would be carried out.

4.1 Security Measures

During the period when the first abandonment notice has been served, and the second abandonment notice is yet to be served, Ferguslie Park Housing Association may enter the property at any time to secure the property and any fixtures, fittings and furniture against vandalism. This includes making forced entry to the property.

4.2 Contact from the Tenant

Where the tenant contacts the Association within the 28 days and confirms in writing of their intention to occupy the property as their home, the abandonment procedure will be cancelled. A home visit should be arranged to confirm the tenant is living in the property.

4.3 Termination of the Tenancy

Where a tenant fails to respond to the Abandonment Notice, the tenancy can be ended without court action by service of a Second Abandonment Notice not sooner than 28 days after the first Abandonment Notice provided:

- A proper Abandonment Notice has been served

- Staff have made reasonable enquiries to be satisfied that the property has been unoccupied and that the tenant does not intend to occupy it as his/her home.

Enquiries should be ongoing from the service of the First Abandonment Notice, to the service of the Second Abandonment Notice that terminates the tenancy. Records of all inquiries must be recorded as this is necessary to ensure the Association has acted reasonably in accordance with legal provisions. This information will be important if a tenant raises a formal appeal or raises an action of alleged unlawful termination of tenancy.

Following the service of the Second Abandonment Notice (which terminates the tenancy) the property will be processed for re-let in accordance with our Allocation and Void Policy procedures.

4.4 Appeals by the Tenant

Any tenant aggrieved by the termination of the tenancy under the Abandonment Procedures has the legal right to appeal to the Sheriff Court within 6 months from the date the tenancy was ended. The court can grant a declaratory that the notice is of no effect (where the property has not been re-let), or direct the Association to make other suitable accommodation available (where the property has been re-let). Suitable alternative accommodation is defined by the Housing (Scotland) Act 2001, Schedule 2, Part 2, and is essentially accommodation that is 'like for like' with the previous accommodation.

This will apply whenever the Association:

- Has not served a valid Abandonment Notice
- Did not have reasonable grounds for finding the property to be unoccupied, or the tenant did not intend to occupy it as his/her home, or
- Acted in error in finding that the tenant did not intend to occupy the property as their home and the tenant had reasonable cause by reason of illness or otherwise for failing to notify the Association of their intention to occupy.

The court may also make other orders where a tenant has successfully challenged an abandonment order, for example, by instructing the Association to forego rent due for the period of apparent abandonment.

If keys are returned to Ferguslie Park Housing Association with no termination notice, then the Abandonment Procedure will be followed.

5. Abandonment Notices for Joint Tenant's

Section 20 of the Housing (Scotland) Act 2001 gives the Association the right to end a joint tenant's interest in a property where we have reasonable grounds for believing the joint tenant is not occupying the property and does not intend to occupy it as his/her home.

In the case of joint tenants who have left the property, a separate notice must be served on all tenants. The notice must:

- State that Ferguslie Park Housing Association has reason to believe that the abandoning tenant is not occupying the property and does not intend to occupy it as his/her home

- Require the abandoning tenant to inform Ferguslie Park Housing Association within 28 days of the service of the notice if he/she intends to occupy the property as their home
- informing the abandoning tenant that, if it appears to Ferguslie Park Housing Association at the end of that period that the abandoning tenant does not intend so to occupy the house, the abandoning tenant's interest in the tenancy will be ended by the service of an appropriate notice.

The Association must ensure that they have:

- served on the abandoning tenant a notice complying with the above, and
- made such inquiries as may be necessary to satisfy the landlord that the abandoning tenant is not occupying the property and does not intend to occupy it as the tenant's home, and

At the end of the 28 day period Ferguslie Park Housing Association is satisfied that the joint tenant does not intend to occupy the property as his/her home, the Association may serve a further notice. This second notice will terminate that joint tenant's interest in the tenancy in not less than 8 weeks after the date of service on the notice. That second notice will not however terminate the tenancy which will continue. That person has a right to make application to the sheriff if we do this.

5.1 Contact from the Joint Tenant

Where the abandoning tenant contacts the Association within the 28 days and confirms in writing of their intention to occupy the property as their home, the abandonment procedure will be cancelled.

The abandoning tenant will be served a second notice advising of the date their interest in the tenancy will come to an end, where the abandoning tenant contacts the Association in writing prior to the date within the second notice, the abandonment procedure on the joint tenancy will be cancelled.

5.2 Terminating the Joint Tenancy

The abandoning tenant's interest in the tenancy will be ended not earlier than 8 weeks after the date of serving the second abandonment notice. This date must be specified within the second abandonment notice.

A joint tenant may, at any time, end his or her interest in the tenancy of the house by giving 4 weeks' written notice to us and to the other joint tenant. That notice will not, however, terminate the tenancy which will continue.

5.3 Appeals by the Abandoning Tenant

A joint tenant under a Scottish Secure Tenancy who is aggrieved by the termination of their interest in the tenancy under the abandonment procedures has the legal right to appeal to the Sheriff Court within 8 weeks from the date their interest in the tenancy was ended.

The court can grant a declaratory that the notice is of no effect (where the property has not been re-let), or direct the Association to make other suitable accommodation available (where the property has been re-let). Suitable alternative accommodation is defined by the Housing (Scotland) Act 2001,

Schedule 2, Part 2, and is essentially accommodation that is 'like for like' with the previous accommodation.

This will apply whenever the Association:

- Has not served a valid Abandonment Notice
- Did not have reasonable grounds for finding the property to be unoccupied, or the tenant did not intend to occupy it as his/her home, or
- Acted in error in finding that the tenant did not intend to occupy the property as their home and the tenant had reasonable cause by reason of illness or otherwise for failing to notify the Association of their intention to occupy.

6. Property Found in Abandoned Tenancies

The Scottish Secure Tenancies (Abandoned Property) Order 2002 specifies the procedures that must be followed whenever property is found within abandoned tenancies.

Where property is found in an unoccupied property in which abandonment procedures have started, Ferguslie Park Housing Association must immediately serve a notice on the tenant, and the notice must state that:

- The property is available for delivery to the tenant or the tenant's agent at a place specified in the notice on payment of any sum payable relating to the costs of storage is made, and
- If the property is not collected by the tenant from the specified place on or before the date specified in the notice (being a date not fewer than 28 days from the date of service of the notice and not earlier than the date on which the landlord repossesses the house) it may be disposed of in accordance with the Order.

The notice must be served by posting it to the tenant in a recorded delivery letter addressed to the tenant at the tenant's last known address, or by leaving the notice for the tenant at that address.

6.1 Disposal of Property

The Association must store property for a period of 6 months from the date the property was repossessed unless, in the Association's opinion, the value of the property is insufficient to cover the costs of storage for 6 months.

After the 6 months has expired, the Association may sell the property to pay for expenses associated with storage and use any balance towards rent arrears.

The Association can dispose of items that are not of sufficient value to store for a period of 6 months as it sees fit.

7. Performance Monitoring

An annual report to the Board in the form of the Annual Return on the Charter will provide the following information for the relevant reporting year:

- Number of tenancies terminated by abandonment

- Percentage of new tenancies sustained for more than one year by source of let

8. Equality & Diversity

Ferguslie Park Housing Association is committed to providing fair and equal treatment to all our customers and to comply with the Equalities Act 2010.

We will offer customers a range of options for communicating with us, since requiring to contact us may have to be in writing and this may be a deterrent, for example for people with poor literacy skills, visual impairment, or where English is not their first language.

9. General Data Protection Regulations

The Association will treat all personal data in line with our obligations under the current General Data Protection Regulations and our own Data Protection Policy Statement, Privacy Policy and Data Retention Policy.

Information regarding how your data will be used and the basis for processing your data is provided within our employee and resident Fair Processing Notice.

10. Policy Review

The Abandonment Policy will be reviewed every three years unless recommended change is required through analysis of the abandonment process, feedback from tenants, or a change in legislation.