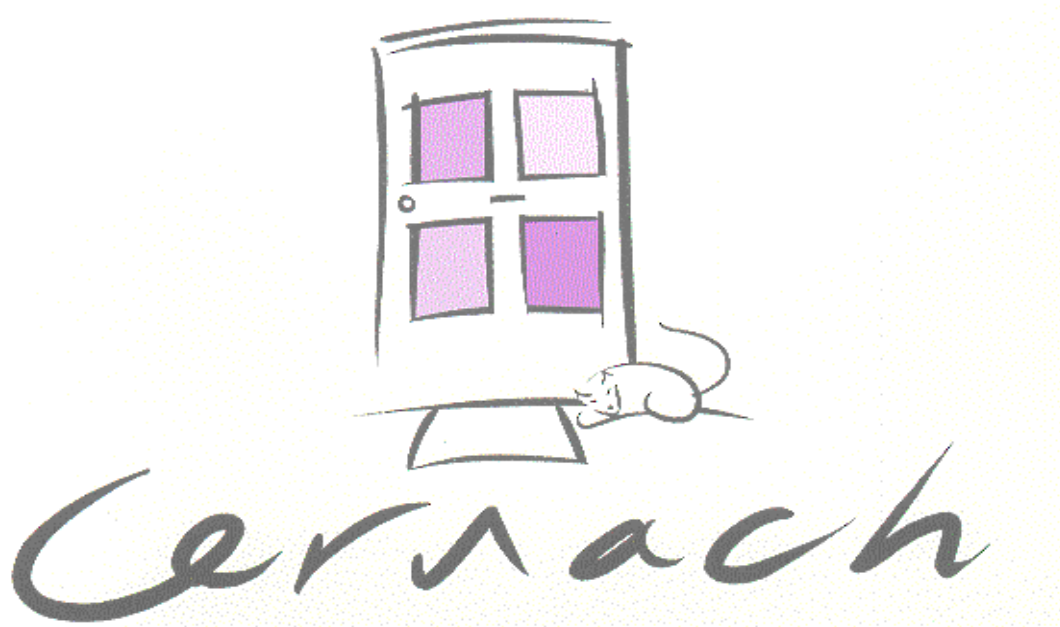


# **CERNACH HOUSING ASSOCIATION LIMITED**



## **ABANDONED TENANCIES POLICY**

**Date Approved by Management Committee:**

October 2019

**Due for Review:**

October 2022

# Cernach Housing Association

## Abandoned Tenancy Policy

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### 1. Introduction

- 1.1 Abandoning tenancies is a common problem, both nationally and to a lesser degree within the Cernach Housing Association's stock. There are a number of reasons why people abandon properties, ranging from fleeing debt or harassment to a simple lack of responsibility to the landlord. When a tenancy has been abandoned, the vigilance of the Association and the local community is exercised and this policy provides the tools to repossess the tenancy quickly without having to go through a lengthy court procedure.
- 1.2 This Policy derives from the Housing (Scotland) Act 2001, Part 2, Sections 17 – 21 and the Tenancy Agreement (section 6.4).
- 1.3 The Abandoned Tenancy Policy is to be used in conjunction with the Abandoned Tenancy Procedure document.

### 2. Policy Objectives

- 2.1 The overall aim of this Policy is to identify, repossess and re-let properties as quickly as possible in order to minimise rent loss resulting from abandoned properties. The specific objectives are to:
  - a) determine quickly if a property is abandoned.
  - b) demonstrate that the proper investigations have been carried out to establish that the Association has reasonable grounds to believe a property has been abandoned, is unoccupied and the tenant does not intend to return.
  - c) minimise potential rent loss through abandoned properties.
  - d) minimise costs to the Association e.g. repairs, storing belongings etc.
  - e) reduce estate management issues arising from an unoccupied property.
  - f) ensure 28 clear days notice are given to a tenant between the first and second abandonment notice being served.
  - g) make best use of housing stock by making sure abandoned properties are re-let quickly.
  - h) protect the rights of tenants and the Association when repossessing a property.

### **3. Risk Management**

- 3.1 By having a written detailed policy for dealing with Abandoned Tenancies the Association is able to ensure that a uniform and professional approach is adopted throughout the organisation and the service delivered is compliant with law, best practice and internal policy.
- 3.2 The risk of not having this policy in place is property could be left lying empty, resulting in loss of rent income and proper use not been made of the Association's housing stock.

### **4. Equality and Diversity**

- 4.1 The Association's Equality and Diversity policy, which was approved by the Committee in April 2015 following community consultation, outlines our commitment to promote a zero tolerance to unfair treatment or discrimination to any person or group of persons, particularly on the basis of any of the protected characteristics<sup>1</sup>. This includes ensuring that everyone has equal access to information and services and, to this end, the Association will make available a copy of this document in a range of alternative formats including large print, translated into another language or by data transferred to voice.
- 4.2 We are also aware of the potential for policies to inadvertently discriminate against an individual or group of individuals. To help tackle this and ensure that it does not occur, best practice suggests that organisations carry out Equality Impact Assessments to help identify any part of a policy that may be discriminatory so that this can be addressed (please see section 6 of the Equality and Diversity Policy for more information).
- 4.3 In line with section 6.3 of the Equality and Diversity Policy, the Association will apply a screening process based on that recommended by the Equality and Human Rights Commission to ascertain whether each policy requires an Impact Assessment to be carried out. The screening process was applied to this policy and it was decided that an impact assessment is not required.

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<sup>1</sup> The Equality Act 2010 identifies the "protected characteristics" as age, disability, marriage and civil partnership, race, religion or belief, gender, gender reassignment and sexual orientation.

## **5. Legislative and Regulatory Framework**

5.1 The provisions and implementing of the Abandoned Tenancy 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
- Data Protection Act 1998
- Disability Discrimination Act 1995
- Race Relations Act 1976
- Race Relations (amendment) Act 2000
- Sex Discrimination Act 1975
- Human Rights Act 1998
- Scottish Secure and Short Scottish Secure Tenancy Agreement
- Equalities Act 2010

5.2 We also operate this policy in line with The Scottish Social Housing Charter and specifically the following outcomes:

### **Outcome 6: Estate Management, anti-social behaviour, neighbour nuisance and tenancy disputes**

- Tenants and other customers live in well-maintained neighbourhoods where they feel safe

### **Outcomes 7,8 and 8: Housing Options**

- People at risk of losing their homes get advice preventing homelessness

### **Outcome 11: Tenancy Sustainment**

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

### **Outcome 13: Value for Money**

- Tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.

## **6. Responsibility and Delegated Authority**

6.1 It is the responsibility of Housing Management Staff to implement this Policy. Housing Management Staff have a responsibility for:

- carrying out tenancy management visits and investigating possible cases of abandonment
- liaising with other service providers to investigate thoroughly the whereabouts of any tenant who may have abandoned their tenancy
- dealing with problems associated with tenancy abandonments
- dealing with tenancies where one tenant has left the property and effectively abandoned the tenancy
- maintaining the abandoned tenancy register

6.2 The Senior Housing Officer has responsibility for:

- monitoring the performance of staff
- monitoring the operation and implementation of the Policy , reporting to the Property & Development Sub-Committee and assisting the Housing Services Manager with the review of the Policy

6.3 The Housing Service Manager retains overall control and decision making in relation to the Policy. The Housing Services Manager will report to the Director on key performance indicators.

6.4 The Property & Development Sub-Committee will monitor cases reported to them on a monthly basis as delegated by the Management Committee.

## **7. Investigations**

7.1 Under sections 17 and 18 of the Housing (Scotland) Act 2001 (the Act) Cernach Housing Association may terminate a Scottish Secure Tenancy without going to court if it has reasonable grounds for believing that:

- **The house is not occupied and**
- **The tenant does not intend to occupy the house as the tenant's home.**

That is, it believes the house has been **abandoned**: section 17(1).

Section 17 of the Act gives Cernach Housing Association powers to deal with properties it believes are abandoned including:

- Entering the house **at any time** in order to secure the house, fittings, fixtures or furniture against vandalism;
- To facilitate this the landlord may force open doors and locked places such as windows, outhouses and cupboards;
- Proceed with repossession action under section 18.

7.2 Before repossessing an abandoned property, the Association will take every opportunity to satisfy itself that the property is unoccupied and that the tenant has no intention of re-occupying it. Housing staff will record the findings as set out in the Abandoned Tenancy Procedure in order for the Association to demonstrate its enquiries were sufficient and reasonable in the circumstances.

7.3 Examples of investigations are as follows:

- Contact the tenant by all methods available.
- Check for mail accumulating at the property.
- Check for personal belongings at the property.
- Taking gas/electricity meter readings (where possible) to check for usage.
- Consult with neighbours.
- Contact any next of kin or emergency contact persons.
- Check for last rent payment and repairs reported.
- Liaise with social work, police, health boards to establish if they have had any contact with the tenant.
- Establish if a homeless application has been made.
- Check if the tenant is still registered for Council Tax.

## **8. Abandonments of a Scottish Secure Tenancy**

8.1 The statutory abandonment procedure in Sections 17-21 of the Housing (Scotland) Act 2001 (the Act) must not be used to coerce tenants to contact the Association, for example to discuss rent arrears or access for gas servicing. This is an improper use of the procedure and opens the Association to an accusation of acting unreasonably.

- 8.2 If the Association is satisfied that a property has been abandoned, the Act calls for the service of 2 notice of abandonment documents. The Notice of Abandonment 1 will give a full 28 days' notice in writing of the intention to end the tenancy and the Notice of Abandonment 2 bringing the tenancy to an end following the initial 28 day period. Day 1 of the 28 day period is taken as the day following the date the Notice of Abandonment 1 has been served.
- 8.3 It is a requirement for the notice of abandonments to be hand delivered to the address of the tenancy by two members of staff. If the Association has information on where the tenant may be living, a copy will also be sent to that address. The Notice of Abandonment 1 must:
- state the reasons for believing that the property is unoccupied and that the tenant does not intend to occupy it as his or her home.
  - require the tenant to inform the Association in writing within 28 days of the notice being served that he or she intends to occupy the house as their home;
  - inform the tenant that if, at the end of the 28 day period, it appears to the Association that he or she does not intend to occupy the house, then the tenancy will be terminated with immediate effect.
- 8.4 During the 28 day period following the first Notice of Abandonment being served, the Association will continue to make sufficient enquiries to satisfy itself that the property is unoccupied and the tenant does not intend to occupy it.
- 8.5 At the end of the 28 day period, the Notice of Abandonment 2 is served which terminates the tenancy with immediate effect.

## **9. Keys Handed in Without Notice**

- 9.1 If keys to a property are handed in without the tenant completing a termination form to give their 28 days notice, the abandonment procedure will be followed. The tenant will be informed that they will remain liable and responsible for the property and any rent due until the tenancy is terminated at the end of the abandonment process. The Association will be unable to enter the property unless there is a requirement to make the property, fixtures or fittings secure against vandalism.

## **10. Disposal and Storage of Personal Property**

- 10.1 Section 18(4) of the Act and the Secure Tenancies (Abandoned Property) (Scotland) Order 2002 set out provisions for the landlord to secure the safe custody and delivery to the tenant of any property which is found at a house, in particular:
- for requiring charges to be paid in respect of abandoned items before they are delivered to the tenant, and
  - for authorising the disposal of such property, if the tenant has not arranged for its delivery to the tenant before the expiry of such period as the order may specify, and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.
- 10.2 If upon inspection it is found that the tenant has left household items and personal belongings (referred to as property), a photographic record and inventory is taken. If it is the opinion of two inspecting officers that the value of the property is less than the cost of its transport, storage for 6 months as well as any arrears or other debt owing to the Association, it can be disposed of as soon as is practicable. If the value is deemed to exceed these costs, it can be stored for 6 months.
- 10.3 A Notice shall be served on the tenant advising that any property left in the property is available for collection within 28 days, upon payment of the expenses incurred in dealing with the property. It will also inform the tenant that if the property is not collected within the time specified, it will be disposed of by the Association in accordance with the provision of the Order.
- 10.4 The Association may store property for 28 days after the tenancy has been terminated. It should be noted that the Association may dispose of this property if the tenant has not arranged for its delivery to the hands of the tenant before the time specified in the Order, or the value of the property is less than the costs to the Association for storing it as well as any outstanding rent arrears owed by the tenant.
- 10.5 Unclaimed property of insufficient value to recover the costs may be disposed of by either sale or disposal. Any unclaimed property which has been stored for 6 months may be sold to meet the Associations expense of storage and transport. Any remaining credit is paid towards rent arrears or any other debts owing to the Association.



## **11. Register of Abandoned Tenancies**

- 11.1 The Association will keep a register of houses which have been repossessed under Section 18, in which property has been found. This register will be available for public inspection at reasonable times. Houses will remain on this register for 5 years after the tenancy has been repossessed.

## **12. Rechargeable Repairs**

- 12.1 The Association will carry out repair work to the abandoned property for which it is responsible for in accordance with the tenancy or lease agreement.
- 12.2 The tenant shall be charged for the cost of any repairs that are rechargeable under the Void Management Policy, Repairs and Maintenance Policy and Rechargeable Repairs Policy.
- 12.3 Any Former Tenant debt or other debts will be pursued as per the Rent Management Policy.

## **13. Abandonment by a Joint Tenant**

- 13.1 There may be circumstances where a joint tenant vacates a property leaving the remaining tenant at the property. Section 20 of the Act enables the Association to end the interest of a joint tenant where that tenant appears to have abandoned a joint tenancy.
- 13.2 The Association will make sufficient enquiries to satisfy that they believe the joint tenant has abandoned the joint tenancy and has no intention of returning to occupy the property and record its findings. Abandonment by a joint tenant will require more rigorous enquiries to safeguard against false claims of abandonment by the remaining tenant(s).
- 13.3 If the Association is satisfied that a joint tenant has abandoned a property, a Notice of Abandonment 1-Joint Tenant is served on that tenant and a copy on the remaining tenant.
- 13.4 The abandoning joint tenant is required to inform the Association in writing within 28 days of the first notice being served to advise that he/she intends to occupy the property as their home.

- 13.5 If there is no response from the tenant at the end of the 28 days period, a Notice of Abandonment 2-Joint Tenant is served which terminates the joint tenants' interest in the property after a further 28 days from the date the second notice is served. The tenancy will continue in the remaining tenant's name.
- 13.6 If the tenant who has abandoned leaves items at the property, the Association has no obligation to removed, store or dispose of these items.

#### **14. Remaining Occupant Not a Tenant**

- 14.1 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.

#### **15. Squatters**

- 15.1 The Trespass (Scotland) Act 1865 makes it unlawful for a person to lodge in any premises or to occupy or encamp on private land without the consent and permission of the owner or legal occupier.
- 15.2 Where squatters occupy a Cernach Housing Association property, found to be abandoned, the Association will seek legal advice from its solicitors to instigate court proceedings immediately to remove the squatters from the premises

#### **16. Tenant's Recourse to Court**

- 16.1 Under Section 19 of the Housing (Scotland) Act, a tenant of the Association who is aggrieved by the termination of the tenancy under Section 18(2) may raise legal proceedings within 6 months of the termination date of the tenancy.
- 16.2 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. Given that the Association's properties are in high demand, in practice the property will have been re-let and no other suitable accommodation available. In this instance the Association would be required to make an offer of the next suitable property which becomes available to let to the ex tenant.

- 16.3 A joint tenant whose interest in the tenancy has been brought to an end in accordance with these procedures has a right of appeal to court within 8 weeks after their interest has been brought to an end.
- 16.4 The Association will advise tenants and joint tenants of their rights regarding such appeals.

## **14. Policy Reporting**

- 14.1 A report on the number of suspected and confirmed Tenancy abandonment's will be submitted on an annual basis to the Property & Development Sub-Committee. There will be no personal information of tenants, including names or addresses, provided at any time. Information will be provided so that the individual's identities cannot be revealed.

## **15. Customer Satisfaction**

- 15.1 The Association is committed to a high level of customer satisfaction, seeking continuous improvement. The Association will carry out an independent tenant satisfaction survey every three years, which will include questions on housing management issues and will disseminate the results to the tenants.

## **16. Complaints Procedure**

- 16.1 The Association has a published complaints policy & procedure, which can be used where there is dissatisfaction with this policy or the operation of this policy. Any tenant who feels aggrieved by their treatment under this policy can ask for a copy of the Association's complaints policy which is available at the Association's office and on the website [www.cernachha.co.uk](http://www.cernachha.co.uk).
- 16.1 As with all policies, the complaints policy can be made available in large print, translated or on tape. Tenants also have the right to complaint to the Scottish Public Services Ombudsman.

## **17. Staff Training**

- 17.1 Cernach recognises that it is extremely important that the resourcing and training of staff is adequate to meet all the needs of its tenants. The Association is committed to making training relating to the effective identification and management of abandoned properties available to staff. Training should be updated as appropriate. Staff will be encouraged to

network with other RSLs in order to share best practice in dealing with abandoned tenancies.

## **18. Policy Review and Tenant Consultation**

- 18.1 The Association has developed this policy in consultation with tenants, the tenant participation group, the tenants on the consultation register and account taken of representations made.

The Association will publish a summary of this policy in our newsletters and make it available on the Association website.

The Property & Development Sub-Committee and the Management Committee will review the Abandoned Tenancies Policy every three years. This review will be brought forward if there is a need to respond to new legislation and/or policy guidance. The success of this policy will be measured against the following outputs and outcomes:

<b>OUTPUTS</b>	<b>OUTCOMES</b>
Report to sub committee	Committee and staff raised awareness of issue and proactive action taken to minimise incidences of abandoned tenancies. Tenants awareness of tenancy conditions/requirements to give notice of termination/requirement to use property as principle home