



# Abandonment Policy

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## **1. Introduction/Purpose**

- 1.1 The purpose of this policy is to set out the legal process that Rosehill will undertake when a tenant has abandoned his/her property.
- 1.2 Rosehill recognises that an effective approach is important when addressing the issue of suspected abandoned properties. Abandoned properties are undesirable for four main reasons: loss of rental income; are a wasted resource in respect of meeting the housing needs of others; create a negative image within the area and lead to an increased risk of vandalism.
- 1.3 Whilst Rosehill aims to minimise the consequences of abandoned properties e.g. void periods and rent loss, through prompt and effective action this must be balanced with preventing unnecessary distress to tenants.
- 1.4 Rosehill must ensure the action it takes is appropriate and reasonable. Its decision to repossess a property through the abandonment process must be able to withstand legal challenge - tenants have a right to appeal to the court. If the court determines that its decision was wrong or was unreasonable it will be required to re-house the tenant in the same property (if still available) or provide another property. In addition tenants may pursue compensation for personal belongings including furniture, which may have been damaged or disposed of during the abandonment process.
- 1.5 Therefore one of the key aims of this Policy and associated procedures is to ensure that the processes undertaken are robust and provide clear and consistent information for staff.

## **2. Legal and Regulatory Framework**

- 2.1 The legal framework which governs the abandonment process is found in Section 17 of the Housing (Scotland) Act 2001.
- 2.2 The Scottish Secure Tenancy (SST) sets out requirements for tenants about the occupation of the property. The SST states that tenants must take entry to the property, occupy and furnish it and use it solely as their only or principal home.
- 2.3 Failure to occupy the house as the only or principal home will constitute a breach of the terms of the tenancy agreement.

2.4 Tenants also have a duty to inform Rosehill if they do not intend to occupy the house for one month or more.

2.5 The Scottish Social Housing Charter

2.5.1 The Social Housing Charter came into effect in April 2012 and this sets the standards and outcomes that all social landlords should aim to achieve when performing their housing activities. The Charter replaces the Performance Standards and the outcomes relevant to this Policy are:

1. Equalities

Social Landlords perform all aspects of their housing services so that 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.

2 Communication

Social landlords manage their businesses so that tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.

3. Participation

Social landlords manage their businesses so that tenants and other customers find it easy to participate in and influence their landlord's decisions at a level they feel comfortable with.

13. Value for Money

Social landlords manage all aspects of their businesses so that tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.

**3. Communication**

3.1 It is important that tenants are fully aware of their tenancy obligations and the consequences of breaching them. Tenants are taken through the key tenancy obligations when they first sign up for a tenancy.

3.2 Subsequently tenants are reminded of their various obligations including how to end their tenancy correctly on a regular basis through articles in our newsletters and information posted on our website.

#### **4. Staff Responsible**

4.1 Suspected abandonments will be dealt with by the Generic Team (part of overall Housing Services Team). On receiving a report of a suspected abandoned property the Housing Officer will determine if it merits investigation. The various checks will be carried out by the relevant Housing Assistant. However the Housing Officer will be responsible for keeping good, robust and accurate records of the investigation carried out.

4.2 On completion of the investigation the Housing Officer will present the findings to the Housing Services Manager. The Housing Services Manager is responsible for:

- ensuring that staff have followed the Policy and Procedures correctly
- reviewing the investigation findings and being satisfied that they are robust and support the need for proceeding with the abandonment process
- making the decision to proceed or not with the abandonment process.

4.3 The final decision to proceed with the abandonment process rests with the Housing Services Manager and in her absence the Depute Director.

#### **5. Investigation of Suspected Abandonments**

5.1 Suspected abandoned properties may come to Rosehill's attention by various means e.g. other tenants reporting it or staff flagging that they are experiencing difficulties in contacting a tenant. Regardless of how the matter is brought to Rosehill's attention, before an abandonment notice will be served on a tenant, Rosehill will carry out reasonable checks to satisfy itself that the property has been abandoned.

##### **5.2 Rent/Housing Benefit**

5.2.1 The tenant's rent account will be checked to establish if rent payments and/or housing benefit has stopped. Non-payment of rent can be an

indication that the tenant has abandoned the house but is not proof in itself.

### 5.3 House Visits

5.3.1 One of the first checks to be made will be a visit to the suspected abandoned property. If there is no access, staff will leave a card requesting that the tenant contacts the office as soon as possible. Whilst at the property staff will attempt to establish if there are obvious signs that the property may have been abandoned e.g. little or no furniture in the property or a build-up of mail behind the door.

5.3.2 Where the gas and/or electricity meters are external to the property, staff will take meter readings and at subsequent visits will check to see if any power has been used.

5.3.3 Until all of the necessary checks are concluded staff will continue to visit the property on a daily basis. At each visit a card will be left if there continues to be no access.

### 5.4 Contact

5.4.1 Records will be checked to establish if there has been any difficulty in contacting the tenant e.g. has tenant ignored letters issued, failed to show for appointments given, a number of no accesses when staff have attempted house visits and tenant has failed to respond to cards left.

5.4.2 In addition checks will be made with other staff in the office including the Technical Services Staff to establish if they have had cause to contact the tenant and whether they have had difficulty doing so.

### 5.5 Neighbours/Relatives

5.5.1 If checks carried out to this point still lead Rosehill to suspect the house has been abandoned, then staff will speak to the tenant's neighbours.

5.5.2 Bearing in mind the issue of confidentiality, staff will make general enquiries as to whether neighbours have seen the tenant about the house recently.

5.5.3 In addition to checking with neighbours, staff will, if contact telephone numbers/addresses are known, approach relatives/friends of the tenant in an effort to establish the tenant's whereabouts.

## 5.6 Social Services/Other Support Agencies

5.6.1 Where it is known the tenant receives support from Social Services or another support agency, staff will contact the appropriate person to seek their assistance in establishing what the position is with the tenant's house.

## 5.7 Other Contacts

5.7.1 If appropriate staff will extend their enquiries to other possible contacts e.g. schools, employers, police, etc.

## 6. Security of Property

6.1 Rosehill may enter the house at any time for the purpose of securing the house and any fittings, fixtures or furniture against vandalism. If necessary it can force entry to do this.

## 7. Record Keeping

7.1 Throughout the investigation process it is important that effective record keeping is maintained as this will support and evidence Rosehill's decision to repossess a property through the abandonment process. This is particularly important in the event our decision is subsequently legally challenged.

## 8. Abandonment Process

8.1 On completion of the necessary checks if Rosehill believes that it can reach no other outcome but to conclude that the tenant has abandoned the property, the process for recovering the tenancy will begin. The decision will be made by the Housing Services Manager and in her absence by the Depute Director.

### 8.2 First Abandonment Notice

8.2.1 A notice will be hand served on the tenant, usually by the Housing Officer and witnessed by a Housing Assistant. A further copy of the notice will be sent by recorded delivery.

8.2.2 The notice states that Rosehill has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as their home.

8.2.3 The notice requires the tenant to inform Rosehill, in writing, within four weeks of the notice being served if he/she intends to occupy the house as their home.

8.2.4 The notice informs the tenant that if at the end of the four week period it appears to Rosehill that he/she does not intend to occupy the house, the tenancy will be terminated with immediate effect by the serving of a further notice.

8.2.5 The notice gives the tenant 28 days to remove any personal belongings from the house. If the tenant fails to do so by the expiry of the notice any belongings found may be disposed of.

### 8.3 Second Abandonment Notice – Repossession of Property

8.3.1 If it is necessary to serve a further notice on the tenant this will end the tenancy with immediate effect. The decision to issue the second notice will be made by the Housing Manager and in her absence the Depute Director. This notice will be served in the same manner as the first notice. However, the Housing Services Manager will serve the Notice witnessed by the Housing Officer.

8.3.2 The second notice will be served no earlier than a clear 28 days from the first notice.

8.3.3 Once the house has been repossessed, it will be necessary to change the locks. The Housing Officer will be responsible for recording an inventory of any items of furniture, furnishings and other personal belongings of the tenant found in the house. Where possible a photographic record will also be made.

### 8.4 Storage/Disposal of Tenant's Belongings

8.4.1 The estimated value of the tenant's belongings will determine whether such items will be placed in storage or disposed of. This decision will be based on the written and photographic inventories and will be made jointly by the Housing Services Manager and the Housing Officer.



## 8.5 Storage

- 8.5.1 Where it is determined that the value of the tenant's belongings is sufficient to cover the cost of storage, the Housing Officer will arrange for the removal and storage of such items. Such property will be stored for a period of six months from the date Rosehill took possession of the house.
- 8.5.2 If during the period of storage the tenant or any other person who appears to Rosehill to have a right of ownership of any of the property makes contact with Rosehill in relation to his/her belongings, arrangements can be made to have the property delivered to him/her.
- 8.5.3 The property will only be delivered to the tenant or other appropriate person once he/she has produced a receipt for payment of the storage and delivery costs.
- 8.5.4 If at the end of the six month period there has been no contact from the tenant or any other appropriate person, Rosehill will proceed with selling the property. The proceeds of which will be used to cover the costs associated with the abandonment process including storage costs. In the event that there are any proceeds remaining this will be offset against any rent arrears the tenant may have had. If Rosehill has any difficulty selling the property it will be disposed of.

## 8.6 Disposal

- 8.6.1 On taking possession of the house, if any property found is determined to be of insufficient value to cover storage costs, etc and the tenant failed to remove any belongings by the date specified in the notice, Rosehill may sell or dispose of such items.

## 9. Tenant's Recourse to Court

- 9.1 A tenant whose house has been repossessed in accordance with the abandonment process (Sections 17 and 18 of the Act) has the right of appeal to the court within six months of the repossession.
- 9.2 If the court determines that Rosehill acted wrongly or unreasonably it must order that the tenancy continue or direct Rosehill to provide other suitable accommodation.

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

10.1 Where it appears a joint tenant has abandoned the joint tenancy, Rosehill can, under The Housing (Scotland) Act 2001, end that joint tenant's interest in the joint tenancy.

### **10.2 Suspected Abandonments**

10.2.1 It is likely that Rosehill will be advised that a joint tenant has abandoned a tenancy by the remaining joint tenant(s). This in itself would not provide sufficient grounds to begin the process of ending the joint tenant's interest in the tenancy.

10.2.2 Rosehill must proceed with caution when dealing with suspected abandonments of joint tenancies. Rosehill must consider the motives of the remaining joint tenant(s). Claims of an abandonment may arise from a dispute between joint tenants and could therefore be false.

10.2.3 Staff will carry out the appropriate checks as set out under Section 5 above.

### **10.3 Abandonment Process**

10.3.1 On completion of the necessary checks if Rosehill believes that it can reach no other outcome but to conclude that a joint tenant has abandoned the property, the process for ending his/her interest in the joint tenancy will begin. The decision will be made by the Housing Services Manager and in her absence by the Depute Director.

### **10.4 First Abandonment Notice**

10.4.1 A notice will be hand served on the tenant, usually by the Housing Officer and witnessed by a Housing Assistant. A further copy of the notice will be sent by recorded delivery. A copy of the notice must also be served on each of the other joint tenants.

10.4.2 The notice states that Rosehill has reason to believe that the tenant is not occupying the house and does not intend to occupy it as his/her home.

10.4.3 The notice requires the tenant to inform Rosehill, in writing, within four weeks of the notice being served if he/she intends to occupy the house as his/her home.

10.4.4 The notice informs the tenant that if at the end of the four week period it appears to Rosehill that he/she does not intend to occupy the house, his/her interest in the joint tenancy will be ended by the serving of a further notice.

#### 10.5 Second Abandonment Notice

If it is necessary to serve a second notice this will be served as set out above (under First Abandonment Notice). However the Housing Services Manager will serve the Notice witnessed by the Housing Officer. The decision to issue the second notice will be made by the Housing Services Manager and in her absence the Depute Director.

The notice will inform the tenant that his/her interest in the joint tenancy will be ended eight weeks after the date the notice has been served.

#### 10.6 Joint Tenant's Recourse to Court

A joint tenant whose interest in the joint tenancy has been ended in accordance with the abandonment process (Section 20 of the Act) has the right of appeal to the court within eight weeks after the date the second notice has been served.

If the court determines that Rosehill acted wrongly or unreasonably it can effectively reinstate the joint tenant. However if it would be unreasonable to do so, it can direct Rosehill to make other suitable accommodation available.

### **11. Tenant Participation**

11.1 We are a tenant focussed organisation and as such we are committed to involving tenants in all aspects of our work and ensuring that tenants are included, informed and consulted about decisions that have an impact on the way their homes are managed.

11.2 As part of this commitment we will involve our tenants in the development of our policies and seek feedback where appropriate. We will ensure that any significant changes to this Policy and other Policies which will affect our tenants will be the subject of consultation.

## **12. Equality and Diversity**

- 12.1 We are committed to ensuring equal opportunities and fair treatment for all people in our work. In implementing this Policy, we will provide a fair and equal service to all people, irrespective of factors such as gender, race, disability, age, sexual orientation, language or social origin, or other personal attributes.

## **13. Risk Management**

- 13.1 In all the key areas of our business we need to consider any risks which may arise. To this end we have in place a robust Risk Management Policy and from this flows our Risk Register. We have identified our “Top 5” risks which are regularly monitored by our Management Team and Audit Sub-Committee.
- 13.2 The risks relating to abandoned properties have been referred to under paragraphs 1.2 to 1.4. In summary these are loss of rental income, creation of negative image of neighbourhood, wasted resource and vandalism. In addition there is a risk that if we do not follow the abandonment process correctly we leave ourselves open to legal challenge.
- 13.3 Therefore key to the mitigation of these risks is having a comprehensive policy and procedures in place to govern the abandonment process.
- 13.4 To ensure we continue to manage the associated risks we will periodically review this Policy to ensure compliance with all legislative requirements and regulatory and best practice guidance.

## **14. Complaints Procedure**

- 14.1 We aim to get things right first time and provide a good quality service to our tenants. However, we acknowledge that things can go wrong and that some tenants may be unhappy with the service provided.
- 14.2 We promote our Complaints procedure through our website and periodic articles in our newsletters. In addition we initially issued all of our tenants with a copy of the new Procedure introduced in October 2012. This information leaflet is also issued to all new tenants as part of the signing up pack.

## **15. Data Protection**

- 15.1 On the 25<sup>th</sup> May 2018 the legislation governing data protection changed with the introduction of the General Data Protection Regulation (GDPR).
- 15.2 We hold a variety of Personal Data relating to individuals including tenants, waiting list applicants, factored owners, other service users, employees and Committee Members. Our Privacy Policy sets out the basis on which we can process and share such data with third parties, it also sets out how we will securely store individuals' data, whether electronically or in paper format. It also provides information on individuals' rights under GDPR including: to view personal data held about them by us; to request a restriction of processing of their data; the right to be forgotten and a right to object to us processing their data. In terms of the rights to be forgotten and to restrict or object to processing of Personal Data, any such requests will require to be considered on their own merits and legal advice will need to be obtained in some circumstances. We have the responsibility for accepting or refusing such requests and will do so in writing.
- 15.3 Under GDPR we are required to provide all customers whose Personal Data we hold with a Fair Processing Notice (also known as a Privacy Notice). The Notice sets out the Personal Data we process and the basis for doing so.
- 15.4 We will only keep and process Personal Data for the original purpose we gathered it for and we will not keep it for any longer than necessary. Attached to our Privacy Policy is a table of Retention Periods for Personal Data held and processed by us. We recognise that not all Personal Data can be processed and kept for the same period of time, and this will vary depending on the individual circumstances of each person whose Personal Data we hold.
- 15.5 The Privacy Policy sets out what should happen in the event of a Data breach e.g. does the breach require reporting to the Information Commissioner's Office and whether the individual affected should be notified. Timescales are set out for dealing with data breaches.
- 15.6 Full copies of our Privacy Policy are available upon request at our office or from our website [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)

## **16. Policy Review**

- 16.1 This Policy will be reviewed every five years or sooner to ensure it continues to reflect current thinking and practice and to comply with legislative requirements and regulatory guidance.