



Property Factors (Scotland) Act 2011

2011 asp 8

PART 2

DISPUTE RESOLUTION

Effect of failure to comply with property factor enforcement order

23 Effect of failure to comply with property factor enforcement order

- (1) It is for the [^{F1}First-tier Tribunal] to decide whether a property factor has failed to comply with a property factor enforcement order made by the [^{F2}First-tier Tribunal] .
- (2) Where the [^{F3}First-tier Tribunal][^{F4}decides] that a property factor has failed to comply with the property factor enforcement order, the [^{F3}First-tier Tribunal] must serve notice of the failure on the Scottish Ministers.
- (3) The [^{F5}First-tier Tribunal] may not decide that a property factor has failed to comply with a property factor enforcement order—
 - (a) unless the period within which the order requires any work to be executed has ended, or
 - (b) if the [^{F6}First-tier Tribunal is] satisfied, on the submission of the property factor or otherwise—
 - (i) that the property factor is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
 - (ii) that any action required by the order is likely to endanger any person.
- (4) Where the [^{F7}First-tier Tribunal is] prevented by reason only of subsection (3)(b) from deciding that a property factor has failed to comply with a property factor enforcement order, the [^{F8}First-tier Tribunal] must serve notice on the Scottish Ministers stating that [^{F9}it considers] the property factor to be unable to comply with the property factor enforcement order.

Status: Point in time view as at 01/12/2016.

Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011, Cross Heading: Effect of failure to comply with property factor enforcement order. (See end of Document for details)

Textual Amendments

- F1** Words in s. 23(1) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(a)(i)** (with sch. 1 para. 5)
- F2** Words in s. 23(1) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(a)(ii)** (with sch. 1 para. 5)
- F3** Words in s. 23(2) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(b)(i)** (with sch. 1 para. 5)
- F4** Word in s. 23(2) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(b)(ii)** (with sch. 1 para. 5)
- F5** Words in s. 23(3) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(c)(i)** (with sch. 1 para. 5)
- F6** Words in s. 23(3)(b) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(c)(ii)** (with sch. 1 para. 5)
- F7** Words in s. 23(4) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(d)(i)** (with sch. 1 para. 5)
- F8** Words in s. 23(4) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(d)(ii)** (with sch. 1 para. 5)
- F9** Words in s. 23(4) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(d)(iii)** (with sch. 1 para. 5)

Commencement Information

- I1** S. 23 in force at 1.10.2012, see s. 33(2)

24 Property factor enforcement order: offences

- (1) A person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.
- (2) For the purposes of subsection (1), a person has reasonable excuse for failing to comply with a property factor enforcement order if—
 - (a) the person is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
 - (b) any action required by the order is likely to endanger any person.
- (3) Subsection (2) does not affect the generality of the defence of reasonable excuse.
- (4) A person cannot be guilty of an offence under subsection (1) unless the [F10First-tier Tribunal] which made the property factor enforcement order in question [F10has] decided under section 23(1) that the property factor has failed to comply with it (but such a decision does not establish a presumption that the person has committed an offence under subsection (1)).

Status: Point in time view as at 01/12/2016.

*Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011,
Cross Heading: Effect of failure to comply with property factor enforcement order. (See end of Document for details)*

- (5) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Textual Amendments

- F10** Words in s. 24(4) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 12** (with [sch. 1 para. 5](#))

Commencement Information

- I2** S. 24 in force at 1.10.2012, see s. 33(2)

Status:

Point in time view as at 01/12/2016.

Changes to legislation:

There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011,
Cross Heading: Effect of failure to comply with property factor enforcement order.