



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 homeowner housing committee to decide whether a property factor has failed to comply with a property factor enforcement order made by the committee.
- (2) Where the committee decide that a property factor has failed to comply with the property factor enforcement order, the committee must serve notice of the failure on the Scottish Ministers.
- (3) The committee 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 committee are 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 committee are 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 committee must serve notice on the Scottish Ministers stating that they consider the property factor to be unable to comply with the property factor enforcement order.

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 homeowner housing committee which made the property factor enforcement order in question have 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)).
- (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.