

Housing (Scotland) Act 2014

2014 asp 14

PART 4

LETTING AGENTS

Letting agent enforcement orders

48 Applications to First-tier Tribunal to enforce code of practice

- (1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.
- (2) A relevant letting agent is—
 - (a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
 - (b) in relation to an application by a landlord, a letting agent appointed by the landlord,
 - (c) in relation to an application by the Scottish Ministers, any letting agent.
- (3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.
- (4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.
- (5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.
- (6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.
- (7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a "letting agent enforcement order") require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.
- (8) A letting agent enforcement order—

- (a) must specify the period within which each step must be taken,
 - (b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.
- (9) References in this section to—
- (a) a tenant include—
 - (i) a person who has entered into an agreement to let a house, and
 - (ii) a former tenant,
 - (b) a landlord include a former landlord.

49 Variation and revocation of enforcement orders

- (1) The First-tier Tribunal may, at any time—
- (a) vary a letting agent enforcement order, or
 - (b) where it considers that the steps required by the order are no longer necessary, revoke it.
- (2) References in this Part (including this section) to a letting agent enforcement order are to be treated as references to the order as so varied.

50 Failure to comply with enforcement order

- (1) The First-tier Tribunal may, after the period within which a letting agent enforcement order requires steps to be taken, review whether the letting agent has complied with the order.
- (2) If the Tribunal decides that the letting agent has failed to comply with the letting agent enforcement order it must notify the Scottish Ministers of that failure.
- (3) But the Tribunal may not make such a decision if it is satisfied that the letting agent has a reasonable excuse for failing to comply.

51 Enforcement orders: offence

- (1) A letting agent who, without reasonable excuse, fails to comply with a letting agent enforcement order commits an offence.
- (2) A letting agent cannot be guilty of an offence under subsection (1) unless the First-tier Tribunal has decided that the letting agent has failed to comply with the order (but such a decision does not establish a presumption that the letting agent has committed an offence under subsection (1)).
- (3) A letting agent who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.