



Tenements (Scotland) Act 2004

2004 asp 11

Resolution of disputes

5 Application to sheriff for annulment of certain decisions

- (1) Where a decision is made by the owners in accordance with the management scheme which applies as respects the tenement (except where that management scheme is the development management scheme), an owner mentioned in subsection (2) below may, by summary application, apply to the sheriff for an order annulling the decision.
- (2) That owner is—
 - (a) any owner who, at the time the decision referred to in subsection (1) above was made, was not in favour of the decision; or
 - (b) any new owner, that is to say, any person who was not an owner at that time but who has since become an owner.
- (3) For the purposes of any such application, the defender shall be all the other owners.
- (4) An application under subsection (1) above shall be made—
 - (a) in a case where the decision was made at a meeting attended by the owner making the application, not later than 28 days after the date of that meeting; or
 - (b) in any other case, not later than 28 days after the date on which notice of the making of the decision was given to the owner for the time being of the flat in question.
- (5) The sheriff may, if satisfied that the decision—
 - (a) is not in the best interests of all (or both) the owners taken as a group; or
 - (b) is unfairly prejudicial to one or more of the owners,make an order annulling the decision (in whole or in part).
- (6) Where such an application is made as respects a decision to carry out maintenance, improvements or alterations, the sheriff shall, in considering whether to make an order under subsection (5) above, have regard to—
 - (a) the age of the property which is to be maintained, improved or, as the case may be, altered;
 - (b) its condition;
 - (c) the likely cost of any such maintenance, improvements or alterations; and

Status: This is the original version (as it was originally enacted).

- (d) the reasonableness of that cost.
- (7) Where the sheriff makes an order under subsection (5) above annulling a decision (in whole or in part), the sheriff may make such other, consequential, order as the sheriff thinks fit (as, for example, an order as respects the liability of owners for any costs already incurred).
- (8) A party may not later than fourteen days after the date of—
 - (a) an order under subsection (5) above; or
 - (b) an interlocutor dismissing such an application, appeal to the Court of Session on a point of law.
- (9) A decision of the Court of Session on an appeal under subsection (8) above shall be final.
- (10) Where an owner is entitled to make an application under subsection (1) above in relation to any decision, no step shall be taken to implement that decision unless—
 - (a) the period specified in subsection (4) above within which such an application is to be made has expired without such an application having been made and notified to the owners; or
 - (b) where such an application has been so made and notified—
 - (i) the application has been disposed of and either the period specified in subsection (8) above within which an appeal against the sheriff's decision may be made has expired without such an appeal having been made or such an appeal has been made and disposed of; or
 - (ii) the application has been abandoned.
- (11) Subsection (10) above does not apply to a decision relating to work which requires to be carried out urgently.