

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 5: Miscellaneous Amendments to the 1991 Act

Section 64: Tenant's right to withhold rent

208. This section inserts new section 15A into the 1991 Act in relation to 1991 Act tenancies. It enables a tenant, in certain circumstances, to apply for the Land Court to authorise the tenant to consign to the Court rent otherwise payable to the landlord and, where the tenant is authorised by the Court to carry out work to fixed equipment which the landlord should have carried out, to apply for reimbursement of the costs from that consigned rent.
209. Subsection (3) applies where the conditions of subsections (1) and (2) are complied with.
210. Subsection (1) is complied with where the tenant has obtained from the Scottish Land Court, under section 84(1)(b), an order requiring the landlord either (a) to do or perform some act, other than payment of money (known as an order *ad factum praestandum*) or (b) to fulfil a contractual obligation (known as an order for specific implement) in relation to an obligation in respect of fixed equipment owed by the landlord to the tenant which the landlord has failed to fulfil. In both cases, the granting by the Land Court of an interim order is sufficient for the purposes of compliance with subsection (1).
211. Subsection (2) is complied with where such an order of the Land Court as is mentioned in subsection (1) has not been complied with by the landlord in a material regard by the date specified in that order or such later date as the Court may have fixed in accordance with section 84(2)(b).
212. Where subsections (1) and (2) are complied with, subsection (3) confers upon the tenant the right to apply to the Land Court for either or both of the orders specified in paragraphs (a) and (b). The first of these, under paragraph (a), is an order authorising the tenant to carry out the work that the landlord would have required to have carried out to comply with the order referred to in subsection (1).
213. The second, under paragraph (b) of subsection (3), is an order authorising the tenant to withhold payment of rent due to the landlord in respect of the holding. The right to withhold rent under paragraph (b) can only be granted subject to the condition that the tenant must consign (i.e. pay) to the Land Court the rent that would otherwise have been payable to the landlord. Any right of the landlord to irritate the lease for non-payment of rent or to take action under sections 20 (removal, of tenant for non-payment of rent) or 22 (restrictions on notices to quit) of the 1991 Act is unenforceable if the non-payment is in consequence of an order of the Court under subsection (3)(b) (see subsection (8)).

*These notes relate to the Agricultural Holdings (Scotland) Act
2003 (asp 11) which received Royal Assent on 17 April 2003*

214. Under subsection (4) a tenant who carries out work authorised by an order of the Land Court under subsection (3)(a) may apply to the Land Court, asking that it release to the tenant funds from the rent payments held by the Court. These funds may be used towards, or in satisfaction of, the costs incurred by that tenant in connection with the carrying out of work authorised by the Court under subsection (3)(a).
215. An order under subsection (3)(b) continues in force until such time as the Land Court, on the application of the landlord, considers that it would not be appropriate for the order to continue and so terminates it. In considering terminating such an order the Court must have regard to any work that the the tenant was authorised to carry out under subsection (3)(a) and any costs referred to in subsection (4) (see subsection (5)) The Court shall then, by virtue of subsection (6), divide the consigned funds, or any remaining amount of the consigned funds, between landlord and tenant as it considers to be equitable.
216. To the extent that the tenant is compensated from consigned funds for the costs arising from the work they have been authorised to undertake, that work is to be treated as an improvement carried out at the landlord's expense for the purposes of compensation payable on the tenant quitting the land on termination of the tenancy (see subsection (7)). Subsection (9) prohibits the parties from contracting out of these provisions.