

The Tenant Farming Forum (TFF)

Farm Rent Reviews – Introduction and Guide to Good Practice

Introduction

This Guide to Good Practice in rent reviews provides a summary of TFFs recommended practice in conducting a rent review. This will highlight what parties can expect of the process and their responsibilities. The TFF believe implementation of this Guide will reduce conflict by improving the practical operation of rent reviews. A more comprehensive guide to rent reviews can be found in the Practitioners' Guide to Scottish Agricultural Rent Reviews (to be published autumn 2013).

Farms let on tenancies under the Agricultural Holdings (Scotland) Act 1991 (the 1991 Act) are usually referred to as "traditional" or "secure" tenancies. Under these tenancies rents can be reviewed no more than every three years with the process being set out in section 13 of the 1991 Act. Reviews are timed to coincide with the anniversary of the start of the lease. For example if you have a lease which started on 28th November (Martinmas) then rent reviews will take place on that date.

Either landlord or tenant can initiate a review under s13. The party wishing to review the rent is required to serve a notice of that intention no more than 2 years and not less than 1 year in advance of the review date.

The majority of rents are agreed by negotiation. If agreement is not reached the party wishing the review will need to apply to the Land Court for a determination of the rent before the review date. There are other dispute resolution options open to the parties highlighted below.

The TFF encourages regular rent reviews, even if the rent does not change, to help maintain contact and a positive relationship between landlord and tenant.

Rent Review Process and Recommended Timescales

The TFF recommends the following process:

- The formal written notice should be accompanied by a covering letter and a copy of this Introduction and Guide to Good Practice. Relevant contact details should be included.
- A farm inspection may be required to assess the nature of the farm and any changes to fixed equipment, diversification or other circumstances since the last review and should make reference to any existing record of condition. The parties should agree how this should be done. This should be done before the first rent proposal.
- At least 4 months before the review date the party seeking the rent review should issue a written proposal for the revised rent. This should include the proposed rent, how it was calculated including reference to comparable rents and what adjustments have been made to reflect the nature of the farm. Adjustments are sometimes required to take account of the quality of the farm in relation to comparable farms, the nature of the fixed equipment, who provided it, marriage value and scarcity. The Practitioners' Guide to Scottish Agricultural Rent Reviews provides detailed information on the rent assessment process.
- No later than 2 months from the review date the other party should respond in writing either accepting the proposed rent or setting out a counter proposal. Counter proposals should include supporting information including comparable rents and any adjustments made to these. Any dispute over the facts used in the written proposal should be highlighted.
- If no agreement has been reached the parties should agree further discussion, preferably in person, to deal with any disputes of fact and seek a negotiated settlement of the rent review. TFF recommends these discussions take place as shortly after the counter proposal is made as possible to allow time for negotiation before the review date.
- TFF recommends that during discussions parties set out their position clearly together with supporting information. A clear understanding of each position is considered helpful. Parties should conduct themselves in an open and considerate manner showing respect for others views and have consideration for the maintenance of good relations between the parties.

- When agreement is reached this should be recorded in writing and signed by both parties.
- If agreement on the rent cannot be reached, the parties should consider the alternatives to the matter being determined by the Land Court. TFF recommends that the appointment of an arbitrator or expert or the reference to the Land Court is formalised at least one clear month prior to the review date.

The TFF recognises that some parties may be happy to agree to other, perhaps simplified processes. For instance dealing with the matter more informally without written correspondence. The TFF recommends that parties agree this approach in writing, in advance, in case of later dispute.

Dispute Resolution

Options available include:

- **Arbitration** – a new short form of arbitration is now available. Both the RICS and SAAVA will appoint an arbitrator if the parties are unable to agree one themselves.
- **Expert Determination** – the parties can appoint an expert to set the rent. Again RICS and SAAVA can appoint an expert if required.
- **Mediation** – the parties can appoint a mediator who will seek to facilitate an agreement between the parties.

The parties should seek to agree the preferred approach before the review date. It is advisable that parties seek professional advice about each of the options above or reference to the Land Court.

Professional Advice

It may be helpful to take professional advice or appoint an agent to provide support or information during the process. Information on agents or advisors with experience can be obtained from any of the TFF members listed below.

Most agents with experience of rent reviews are members of the RICS, SAAVA or the Law Society of Scotland. If you have a complaint about the failure of an agent to follow this guide, or about professional standards, then these should be referred to their professional body. Each professional body has rules governing conduct and professional standards.

The Land Court may also consider the approach taken by a party in the review process when determining the award of costs should a dispute reach them.

Members of the Tenant Farming Forum

National Farmers Union of Scotland – www.nfus.org.uk

Royal Institution of Chartered Surveyors – www.rics.org

Scottish Land & Estates – www.scottishlandandestates.co.uk

Scottish Tenant Farmers Association – www.tfascotland.org.uk

Scottish Agricultural Arbiters and Valuers Association – www.saava.org.uk

Other useful contacts

Law Society of Scotland – www.lawscot.org.uk

Tenant Farming Forum – www.tenantfarmingforum.org.uk

Central Association of Agricultural Valuers – www.caav.org.uk

Scottish Land Court – www.scottish-land-court.org.uk

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