

TENANT FARMING FORUM

(NFUS, RICS, SEBG, SRPBA, STFA, SAYFC)

NFUS Scotland
c/o Kate Maitland
Rural Centre - West Mains
Ingliston
Midlothian
EH28 8LT

(0131 472 4124)

Suggested best practice for conducting rent reviews

On a national level, agricultural rent reviews have tended to be driven by commodity price cycles rather than the three year review period provided for in the agricultural holdings legislation. As a result, in those cases where reviews have not been sought for many years, changes in proposed rents may on the face of things appear to be disproportionate. If rent reviews were to be carried out on a more regular basis then any adjustments that are warranted would be better able to be accommodated. This should lead to a more positive and constructive approach and create a less fearful response to the review process.

The relationship between tenants and landlords or their respective representatives should be nurtured by regular contact. The rent review process should be seen as a normal and regular part of this business review. Although the legislation requires a formal style of notice, the actual rent review should be seen as a normal part of the working relationship. Both parties should engage from a position of mutual respect and with a desire to reach a conclusion acceptable to both sides. Indeed, the review process may result in agreement that the rent should remain the same or even that it should be reduced.

TFF recommends that landlords and tenants review the rent regularly (but not more frequently than every three years) and if it is proposed that there should be changes the negotiations should begin as early as possible to avoid time pressures aggravating discussions. Both landlords and tenants can initiate a rent review if they feel that is appropriate. The objective on both sides should be to reach agreement well before the appropriate term date. Good practice requires that the process of negotiation should start at least three months before the review date. This would mean that should it not be possible to reach agreement on the rent for the holding, then there is still time for full, proper and detailed submissions to be made to the Land Court for decision.

See this web site www.tenantfarmingforum.org.uk for a paper on the history and development of the statutory provisions governing rent reviews in agricultural tenancy holdings.

The TFF Guide to Good Relations between Landlord and Tenants provides advice in relation to conducting rent reviews. Additional text, shown in red, has now been inserted, to emphasise the merits of a regular cycle of rent review. The revised advice is set out below:

Rent reviews should be seen as part of the normal working relationship between landlord and tenant. The following suggestions should help make the occasion routine, straightforward and avoid friction:

- It is important that both landlord and tenant send the statutory notices where these are required. However, like most legal notices, the language can be terse and unfriendly and, therefore, should always be sent under cover of a less formal letter explaining why it is necessary to send the notice. The letter should indicate that it is the intention to work towards a negotiated agreement and avoid a formal appeal for third party adjudication.
- Opportunity should be taken to review the rent on a regular basis (but not more frequently than every three years) recognising that a change may not be appropriate. Regular review should ensure that both parties have a realistic appreciation of output values and input costs and avoid sudden and alarming adjustments to be made to budgets.
- If annulment of a post-lease agreement is the main reason for serving a rent review notice it should be made plain at the start to prevent misunderstanding.
- Rent negotiations should not be left until the last minute and there should be a serious attempt to conclude negotiations in good time with the process starting at least three months prior to the review date.
- The landlord or his representative and the tenant should agree arrangements to review the property.
- The parties should be encouraged to have a professional advisor available at negotiations if they would find this helpful.
- When negotiating any revised rent, both parties should be transparent about how they arrive at their respective valuations.
- If agreement cannot be achieved at the first meeting, there should be time for reflection before effort is made to reach agreement at a further meeting.
- A formal statement regarding any revised rent should be prepared and signed by both the tenant and landlord.
- Following the review, both parties should agree in writing the revised rent, and all other issues discussed, for example regarding the suitability and condition of fixed equipment including any agreements about repairing obligations or commitments for renewals.
- If apparently insurmountable difficulties arise during the review activity it may be appropriate to seek some form of alternative dispute resolution to prevent the entrenched positions which require involvement of the Land Court.