

## **RESUMPTION**

1991 Act Tenancy

### **THE RIGHT OF RESUMPTION**

For a landlord to be able to resume part of an agricultural holding from a tenant under a 1991 Act Tenancy this must be expressly provided for in the lease. There are no statutory powers of resumption and consequently it is a matter of contract only.

The contractual provisions will determine whether there are specific purposes for which the landlord can resume the land and whether more than one resumption can take place during the duration of the lease.

One of the very few occasions on which the contractual provisions are affected by statute is when the landlord resumes the land for an agricultural purpose. In that event the tenant can serve a counter notice as if he had received a notice to quit.

A key consideration is that the resumption must not be contrary to the good faith of the lease, as otherwise it constitutes what is known as a “fraud on the lease”. The test of fraud is whether the resumption was reasonably in the contemplation of the parties at the time when the lease was entered into. It may be that the lease specifically states what is envisaged. If not, the presumption is that the tenant must continue to be able to make a profitable use of the remainder of the farm for the purpose for which it was let to him. Consequently, the resumption of an excessive area or a strategically important part of the farm is likely to constitute a fraud on the lease.

### **THE PROCESS OF RESUMPTION**

If a landlord wishes to resume land out of a 1991 Act Tenancy then formal written notice must be served on the tenant. This should contain –

- reference to the contractual provision in the lease permitting the resumption
- the date the resumption is to take effect
- details of the land to be resumed, and
- the purpose of the resumption.

The notice period may be stipulated in the resumption clause in the lease which, if greater than 2 months, should be adhered to. If the resumption clause states the notice period to be less than two months or does not provide for any notice period, it is arguable that the resumption clause is ineffective. That point notwithstanding, a minimum of two months' notice must be given to enable the tenant to remove his fixtures and to make his statutory compensation claims, otherwise the notice will certainly be invalid

Unless the tenant contests the resumption notice then he will be obliged to quit the land to be resumed on the date specified in the resumption notice.

## **COMPENSATION TO TENANTS**

In addition to any contractual rights provided for in the resumption clause in the lease, the tenant is entitled to pursue his statutory claims which include –

- reduction in rent
- compensation for disturbance
- additional payment for re-organisation
- early resumption compensation
- improvements.

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