

## **IRRITANCY**

### **Agricultural Tenancies 1991 Act Tenancy**

## **IRRITANCY**

Irritancy is the name given to the process whereby a landlord or a tenant can terminate a tenancy if the other party is in breach of a tenancy condition. In practice, this is a remedy for a landlord and what follows is explained on this assumption.

There are two types of irritancy. The first is known as legal or statutory irritancy and is provided for in the legislation governing the tenancy. In the case of a 1991 Act tenancy, a legal irritancy may be enforced when six months rent is due and unpaid.

The second and more common type of irritancy is known as conventional or contractual irritancy. This will be contained in an irritancy clause in the lease and will provide that, in the event of specified breaches of terms of the lease, the landlord will have the option to terminate the lease or the lease will terminate automatically. A key part of the negotiations between a landlord and tenant prior to entering into a lease will be to agree the terms of the irritancy clause.

## **IRRITANCY IN OPERATION**

### **Legal or statutory irritancy**

Once the breach has occurred (six months rent due and unpaid), the landlord may raise an action in the Sheriff Court for the removal of the tenant at either Whitsunday (28 May) or Martinmas (28 November), whichever term next follows the raising of the action. If the action is successful, the tenant's statutory claims for compensation and improvements are unaffected (although the tenant may not claim compensation for disturbance).

### **Conventional irritancy**

Once the breach has occurred (as provided for in the irritancy clause in the lease), the correct approach is for the landlord to serve on the tenant a formal notice of the occurrence of the irritancy, with a demand requiring the tenant to remove from the farm. If this is resisted by the tenant the landlord may raise an action of declarator and removing in the Sheriff Court.

The key determinants in a conventional irritancy are what is provided for in the irritancy clause in the lease. This may include matters such as the date the irritancy is to take effect, rent arrears and the rights in relation to matter such as growing crops. The tenant's statutory waygoing claims and his right to harvest a growing crop may be validly excluded by an irritancy clause.

An irritancy clause is unenforceable if it fails to provide for the tenant to be given adequate notice to intimate pre-termination waygoing claims. A minimum of two months' notice is recommended.

## **RESPONSE BY THE TENANT**

### **Legal or statutory irritancy**

In the case of a legal irritancy, the tenant can defeat the action by paying the arrears of rent then due or by providing what is known as "caution" (a form of insurance backed guarantee), to the satisfaction of the Sheriff for the arrears and an additional year's rent before the Sheriff grants decree. Because the action can be so readily defeated, the legal irritancy route is very rarely used.

### **Conventional irritancy**

In a conventional irritancy, if the tenant believes that he has a valid defence he can have referred to the Scottish Land Court the question of the validity of the irritancy. Alternatively, he can wait until the landlord raises an action for his removal and defend the action at that point. If the latter route is taken, the removal action will have to be "sisted" (put on hold) until the Land Court has resolved the irritancy question.

There are a number of defences open to the tenant, not least denial that the tenant has committed the breach of a term of the lease which purports to trigger the irritancy.

Two other popular defences are –

- mutuality of obligations – this is where the landlord is himself in breach of an obligation imposed on him in the lease, and
- acquiescence – this is where the landlord has known about and taken no action in respect of similar breaches in the past.

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