



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

PART 1

AGRICULTURAL TENANCIES

CHAPTER 2

GENERAL PROVISION AS TO NEW TYPES OF TENANCY

[^{F1}New types of tenancy: general provision]

12 Right of tenant to withhold rent

- (1) Subsection (2) applies to an order—
 - (a) made under subsection (1)(b) of section 84; and
 - (b) which is in relation to a failure of the landlord in a short limited duration tenancy [^{F1}, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] to fulfil any obligation the landlord has towards the tenant in respect of fixed equipment.
- (2) Where the landlord has failed—
 - (a) in a material regard; and
 - (b) as at the date specified under subsection (2) of that section,to comply with an order to which this subsection applies, the tenant may apply to the Land Court for an order under subsection (3).
- (3) An order under this subsection may (either or both)—
 - (a) authorise the tenant to carry out such work as the landlord would have to have carried out for the landlord to comply with the order to which subsection (2) applies; and
 - (b) authorise the tenant to withhold payment of the rent payable to the landlord under the tenancy on the condition that the tenant consigns to the Land Court the amount otherwise so payable.

Changes to legislation: *Agricultural Holdings (Scotland) Act 2003, Section 12 is up to date with all changes known to be in force on or before 06 February 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The Land Court may, on the application of the tenant, from time to time release to the tenant any of the amount so consigned towards or in satisfaction of any reasonable costs incurred or to be incurred by the tenant for the purposes of or in connection with the carrying out of such work as is mentioned in paragraph (a) of subsection (3).
- (5) The Land Court, on the application of the landlord and having regard to—
- (a) whether any work mentioned in paragraph (a) of subsection (3) remains to be carried out; and
 - (b) any costs mentioned in subsection (4),
- may terminate the order made under subsection (3) if it considers that it would be not be appropriate for the order to remain in force.
- (6) Where the Land Court terminates the order made under subsection (3), it is to order such division between the landlord and tenant of the amount (or, where any of the amount has been released to the tenant, any remaining amount) consigned under subsection (3)(b) as it considers to be equitable.
- (7) Any work carried out and authorised under subsection (3)(a) is to be treated as having been carried out at the landlord's expense in so far as the costs of the work have been or are to be satisfied by the release to the tenant of any amount consigned under subsection (3)(b).
- (8) Any right of the landlord to irritate the lease or remove the tenant on the grounds of non-payment of rent is unenforceable if the non-payment of rent is in consequence of an authorisation under subsection (3)(b) to withhold rent.
- (9) Any term of the lease or of any agreement between the landlord and tenant that purports to deprive the tenant of any right conferred by virtue of this section is, in so far as it so purports, of no effect.

Annotations:

Amendments (Textual)

- F1** Words in s. 12(1)(b) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), [sch. 2 para. 7\(5\)](#) (with s. 128); [S.S.I. 2017/299](#), reg. 2, sch. (with reg. 12)

Commencement Information

- I1** S. 12 in force at 27.11.2003 by [S.S.I. 2003/548](#), [art. 2\(a\)](#) (with Sch.)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7C inserted by 2016 asp 18 s. 93(2)
- s. 7D inserted by 2016 asp 18 s. 106(2)
- s. 8F8G inserted by 2016 asp 18 s. 94(2)
- s. 16B inserted by 2016 asp 18 s. 95(2)
- s. 17A inserted by 2016 asp 18 s. 96(2)
- s. 18B inserted by 2016 asp 18 s. 97(2)
- s. 26(1)(1A) substituted for s. 26(1) by 2016 asp 18 s. 99(4)(a)
- s. 26(3) inserted by 2016 asp 18 s. 99(4)(c)