

NEWS RELEASE
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TENANTS HAIL SUCCESSION VICTORY

Tenant farmers in Scotland are delighted with the news that a recent judgement in the Scottish Land Court has removed some of the obstacles hindering the succession of young tenants into their family farms. In a decision released this week the Land Court has ruled that a Borders tenant is allowed to assign his tenancy to his nephew despite various objections raised by his landlord.

According to Hamish Lean, leading agricultural legal expert from Blackadders and adviser to the Scottish Tenant Farmers Association: "The Land Court has just issued an important decision in respect of what constitutes reasonable grounds on the part of a landlord to object to the assignation of a secure agricultural tenancy. This right was introduced by the Agricultural Holdings (Scotland) Act 2003 and allows a secure tenant to assign his or her interest as tenant to a member of their family, during their lifetime.

A landlord is entitled to object on reasonable grounds and the act gives specific examples including a lack of skills and experience and a lack of financial resources. Some commentators suggested that "reasonable grounds" could also include circumstances where the landlord might expect to get the holding back if the existing tenant died and which opportunity would be denied if the assignation took place. This might be where the tenant had no eligible successor on death or where the holding was not a 2 man unit and so on.

The recent decision in the case of **James Forrest Fleming v Ladykirk Estates Ltd** issued on 28th April makes clear that succession on death issues are not reasonable grounds of objection to an assignation. In that case, which involved a farm near Coldstream, an elderly bachelor tenant with no children sought to assign the tenancy to his nephew who was amply qualified. The landlords objected on the basis that assignation would deprive them of the right to serve an incontestable notice to quit on the nephew were he to inherit the tenancy on the death. The Land Court overruled this objection.

This decision clarifies the exercise of an important right available to secure tenants and makes clear that assignation is a perfectly valid method to plan the continued existence of a secure agricultural tenancy within the family where there is a risk of losing the tenancy on the death of the tenant. "

Commenting on the Land Court ruling, STFA Chairman Angus McCall said: "The 2003 Act set out to modernise tenancy law and in this instance the clear intention of parliament was to encourage early succession into farm tenancies and to avoid the pitfalls of succession following death which have already deprived a good number of tenants from carrying on in the family farming business.

An estimated 80% of tenanted land in Scotland is held under heritable 1991 tenancies and it is from this reservoir that the bulk of new entrants will emerge, so it is imperative that the natural ebb and flow of succession is allowed to take place unhindered. Once a farm is taken back in hand it is seldom relet as a unit and even more rarely to a new entrant. Reluctant to use formal tenancies, the preferred option of landlords is to amalgamate land and asset strip cottages and buildings, to rent out the land on short-term lets or use contract farming arrangements. This is clearly not in the long-term interests of the rural community which needs the stability and continuity that can be achieved with secure and viable farming businesses.

The tenanted sector is contracting at an alarming rate and the outcome of this Land Court case is welcome news. STFA is well aware of problems with succession and assignation in tenancies. More honesty is needed about the reality of a shrinking tenanted sector and the unwillingness to allow land to be passed on in tenanted families if it can be thwarted. Government will have to take this fact into account and take steps to reverse this process of attrition if any New Entrant Scheme to have a chance of success.

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