

News Release
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MOONZIE HIGHLIGHTS NEED FOR CHANGE

In releasing its long awaited verdict on the “Moonzie” rent case today the Court of Session has overturned the decision reached by the Land Court in June 2010. In his 41 page judgement Lord Gill has questioned not only the findings of the Land Court but also the changes made to the rent review provisions in the 2003 Act.

Crucially, the Court rejected the argument, supported by the Land Court, that the SFP was not part of the earnings of the farm and therefore should not be taken account of in rental calculations. Lord Gill has stated that, in his opinion, rent should be assessed primarily on the basis of open market lets, suitably adjusted to take account of factors such as scarcity and marriage value. Comparable evidence of settled rents were a second best and budgets should be only used as a last resort. He blamed “inept drafting” by the Scottish Parliament Act as contributing towards the confusion.

In reacting to the news STFA chairman Angus McCall said; “Tenants will obviously be disappointed at the conclusions reached by the Court of Session which now mean that the case will be remitted back to the Land Court to revise its valuation of the rent in light of the court’s views. What it does highlight are the inadequacies of a system that can allow a rent dispute to escalate into a legal marathon at a six figure cost.

“STFA has been critical of the deficiencies inherent in the rent review system for some time. This ruling has demonstrated the need for a hard look at the current rent review system which is patently not fit for the 21st century. We will be pressurising the Scottish Government to revisit Agricultural Holdings as a matter of priority to ensure that the ambiguities identified by Lord Gill are removed from the legislation and changes are made to take account of modern practices.

“The fact that two Scottish Courts have come to such divergent opinions shows a weakness in the legal process which undermines the confidence of farm tenants in a system which has been failing them for some time. This has been identified by STFA and we now hope our continued calls for a complete overhaul of rent reviews in particular, and agricultural holdings in general, will now be addressed as a matter of urgency. The Moonzie case has also demonstrated the need for the development of alternative methods of resolving disputes to make justice available to all rather than placing reliance on a lengthy one way street of costly litigation where the only beneficiaries are the legal profession.

“At present the average tenant feels extremely vulnerable in the David and Goliath scenario he faces in a rent review if he fails to reach agreement in any demand for an unjustifiable rent increase by his landlord. The protracted first rent review case to go through the courts in two decades will bring him small comfort. A fairer cheaper more expedient system must be put in place if the rent review process is to have credibility.

“STFA will be digesting this legal judgement over the coming days and will be issuing detailed guidance to members in due course.”

For further comment:

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Judgement available at: <http://www.scotcourts.gov.uk/opinions/2012CSIH10.html>