



Death of a Tenant.... revisited

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Death of a Tenant....revisited

Unfortunately a very common question we receive at ACOP relates to what happens to a tenancy when a tenant passes away while in a rental tenancy agreement? In this newsletter we will only address what happens when there is no other tenant or authorised occupant residing at the premises. We addressed this issue about a year ago in a newsletter and we have received many questions following that newsletter.

Obviously, this is not a situation that any property manager wants to deal with, however it is a real topic of concern for many. It must be understood that the tenancy does not just end because the tenant has passed away. In fact that tenancy must be terminated and must be done so in accordance with the Residential Tenancies Act, which addresses the process for the death of a sole tenant in the following manner under s108:

1. On the death of the sole tenant under a residential tenancy agreement, either the landlord or the legal representative

of the tenant may give a termination notice to the other person.

2. The termination notice may specify a termination date that is before the end of any fixed term of the residential tenancy agreement if it is a fixed term agreement.
3. The Tribunal may, on application by a landlord or the legal representative of the deceased tenant, make a termination order if it is satisfied that a termination notice was given in accordance with this section and that vacant possession of the residential premises has not been given as required by the notice.
4. The legal representative of a deceased tenant who is given a termination notice by the landlord may give vacant possession of the residential premises at any time before the termination date specified in the termination notice.
5. The estate of the deceased tenant is not liable to pay any rent for any period after the legal representative gives vacant possession of the residential premises and before the termination date.



Rent is still payable while the termination notice is being prepared and served and until the time the property is returned with vacant possession. This outstanding amount can be claimed from the bond as well as from the estate, being the money that the deceased person has left behind and is subject to their will or other legal directives.

If there are remaining belongings within the premises, the property manager should make an application to NCAT for removal and/or disposal of any goods under Section 133.

One of the questions that arises from the process outlined in S108 is how does a property manager find out who the “legal representative” of the deceased tenant is, in order to be able to serve a termination notice?

There is no simple answer to this question and the steps taken will inevitably differ depending on the situation.

If the tenant was a sole tenant then the first step would be to contact the emergency contact person listed on the tenancy application. The importance of having

someone listed as emergency contact that does not reside at the premises is very clear. Generally, a tenant will list someone like a parent or family member, and mostly (but not always) that person will be able to identify who the “legal representative” would be.

If the tenant has not listed someone as their emergency contact or that person is otherwise unreachable, the property manager should contact the NSW Police and/or the NSW Trustee and Guardian’s office, who will attempt to locate a legal representative of the deceased tenant and administer the estate until such time as a more suitable administrator is located.

If no legal representative or next of kin can be identified, and the Trustee is unwilling to assist, the property manager only has the option to apply to NCAT under s108 and provide the Tribunal with the documented evidence of their attempts to locate a legal representative to whom they could have served the notice of termination.

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