

DEATH of a TENANT

The Residential Tenancies Act 1997 says that as long as at least one tenant remains, the death of a tenant in a shared tenancy does not end the agreement. This applies equally to private and Housing ACT tenants. What this means is that if your joint tenant dies, you should apply as soon as possible for a new rebate, and that your tenancy continues.

EFFECT ON NON-TENANT RESIDENTS

Where there is a Housing ACT tenancy, the tenant dies, and the remaining people living in the house are residents only (not tenants), the situation becomes more complex, as the residents will have no automatic right to stay in the property.

However, there are a number of ways the residents could remain in the property.

TENANCY BY IMPLICATION

A tenancy by implication may arise where Housing ACT is aware of the fact that the tenant has died, but continues to accept rent from the remaining residents and takes no action to evict them. In these circumstances there is a strong argument that a new tenancy will arise in favour of the residents, starting from the date that Housing ACT became aware of the changed circumstances. In order for this to happen, all the elements of a tenancy (most importantly the payment of rent and exclusive possession by the occupants) must be satisfied.

ALLOCATION OF TENANCY TO THE RESIDENTS

Housing ACT has a discretionary power under the Public Rental Housing Assistance Program to provide immediate housing assistance to applicants with an urgent or critical need which cannot be satisfactorily resolved by any other means. It is therefore within Housing ACT's power to allocate a tenancy to the remaining residents of the property in circumstances where the tenant dies. It may be, however, that Housing ACT will choose not to allocate the tenancy to surviving residents if the resident would not qualify for rental assistance from the Commissioner for Housing, or if the house isn't within their entitlement (eg. it has too many bedrooms).

TENANCY INHERITED BY SURVIVING RESIDENTS

Currently, the law in the ACT is that a resident who has been bequeathed the tenancy through the will of the deceased tenant becomes the new tenant.

It may be that a tenant dying without having made a will also transfers their tenancy to a person/people who would inherit their estate.

It is advisable to seek expert legal advice before relying on either of these possibilities.



Welfare Rights & Legal Centre

Advice line
6247 2177



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This fact sheet contains general information available at the time of printing. It does not constitute legal advice. If you have a specific legal problem, please contact the Welfare Rights and Legal Centre's advice line on 6247 2177. The Welfare Rights and Legal Centre is entirely independent of Housing ACT. All assistance is free.

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