

Death of a tenant

Tenants have rights under the Residential Tenancies Act 2010 and Residential Tenancies Regulation 2019. This infosheet summarises the issues that may arise on the death of a tenant.

The death of a tenant does not terminate (i.e. end) the tenancy agreement. It remains in existence and shifts to the estate of the deceased.

It helps if the deceased has a Will, because it will name an executor for the estate.

The Act provides for a tenancy **termination notice** on the death of a sole tenant. The landlord may give a termination notice to the executor of the deceased tenant. The executor may give a termination notice to the landlord. The notice can be for immediate possession, but need not be. The termination notice may be given during a fixed term.

See also: Factsheet 9: *You want to leave* and Factsheet 16: *Ending fixed-term tenancy early*

The rent liability of the tenant's estate ends upon the executor giving vacant possession of the premises to the landlord.

The **NSW Civil and Administrative Tribunal** (NCAT) can order termination of the tenancy and possession of the premises to the landlord if vacant possession is not given according to the termination notice.

See also Factsheet 11: *NSW Civil & Administrative Tribunal* and Factsheet 10: *Landlord ends agreement*

Executors or relatives of the deceased tenant are often able to negotiate the end of the tenancy without going to the Tribunal. Similarly for other occupants of the premises – negotiation with the landlord or agent can be tried. If uncertain, they should seek advice of a Tenants Advice and Advocacy Service (see below for contact details).

Co-tenants and other occupants

For deceased co-tenants, the tenant's executor can give notice to end the deceased's part of the co-tenancy if it is a periodic tenancy or apply to the Tribunal for termination in the special circumstances of the case if it is a fixed-term tenancy.

See also: Factsheet 15: *Share housing*

Other issues that may arise

Termination of the tenancy for the death of a tenant raises all the usual termination issues:

- Rent arrears
- Water charges
- Goods left behind
- Cleaning
- Damage
- Bond and/or other compensation
- Remaining occupants
- Overpaid rent or other charges
- Utility accounts and bills

See also:

- Factsheet 3: *Bond*
- Factsheet 5: *Overdue rent*
- Factsheet 9: *You want to leave*
- Factsheet 15: *Share housing*
- Factsheet 25: *Goods left behind*

Additional issues that may arise include:

- Who is the executor of the tenant's estate?
- Tenants who die without a Will (called 'intestate')
- Whether someone will apply to the Supreme Court to administer the intestacy
- Succession of tenancy by remaining occupants
Note that social housing providers have policies on succession or recognition as a tenant
- Standing for bond claims and before the Tribunal

Importantly, the relatives of a deceased tenant are not liable for debts of the tenancy. Those debts are of the deceased estate.

Fortunately, the Tribunal has discretion to inform itself in any manner it thinks fit and so can be assisted by relatives or friends of the deceased in applications by the landlord where the tenant died intestate.

Friends, relatives, executors and administrators of deceased tenants can seek advice of a **Community Legal Centre** and/or a **Tenants Advice and Advocacy Service** regarding the above issues.

More information

- **Find Legal Answers (State Library of NSW)**
<https://legalanswers.sl.nsw.gov.au/rest-assured-legal-guide-wills-estates-planning-ahead-and-funerals>
- **Legal Aid NSW / Law Access NSW**
<https://www.legalaid.nsw.gov.au/my-problem-is-about/someone-who-died>
- **Community Legal Centres NSW**
<https://www.clcnsw.org.au/>
- **Tenants Advice and Advocacy Services** – see contact details below.

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For free advice, call your local Tenants Advice & Advocacy Service:

SYDNEY:

• Eastern	9386 9147
• Inner	9698 5975
• Inner West	9559 2899
• Northern	9559 2899
• Southern	9787 4679
• South West	4628 1678
• Western	8833 0933

REGIONAL:

• Blue Mountains	4704 0201
• Central Coast	4353 5515
• Hunter	4969 7666
• Illawarra Sth Coast	4274 3475
• Mid Coast	6583 9866
• Northern Rivers	6621 1022
• Northwest NSW	1800 836 268
• Southwest NSW	1300 483 786

ABORIGINAL:

• Sydney	9833 3314
• West NSW	6881 5700
• South NSW	1800 672 185
• North NSW	1800 248 913

WEB: tenants.org.au

NSW FAIR TRADING: 13 32 20

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