



Fact Sheet 13: 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 advise Housing ACT and lodge a new rebate application as soon as possible, and 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 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 a surviving resident if the resident would not qualify for housing assistance (particularly in relation to income or assets) or if the house isn't within their entitlement (e.g. it has too many bedrooms).

Tenancy Inherited by Surviving Residents

Under the law a public housing tenant may bequeath the tenancy through their will to another resident in the property. However, Housing ACT may apply to the ACT Civil and Administrative Tribunal (ACAT) to adjust the rent or to terminate the agreement. In making a decision on such an application the ACAT must consider whether or not the resident(s) in the property meet(s) the eligibility criteria for public housing.

It is advisable for residents to seek expert legal advice before relying on either of these possibilities for remaining in the property.

Disclaimer

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 Canberra Community Law's advice line on 02 6218 7977.

Canberra Community Law is entirely independent of Housing ACT. All assistance is free.

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