

# Toolbox

EXPERT ANSWERS TO LANDLORDS' QUESTIONS

## DEATH OF A TENANT

The NRLA has created a guide for landlords to help them manage the processes following a tenant's passing

### What should you do if your tenant passes away?

The only certainties in life are death and taxes so they say, yet as a nation we tend to shy away from talking about death. But what is the process should something happen to your tenant?

This was the situation faced by landlord Stephen Thomas when he had a phone call from his managing agent explaining that the police had been in touch, and that his tenant had passed away.

"Obviously, it was a huge shock," he said. "My tenant was found after the alarm was raised when he didn't turn up for work, it was terribly sad."

His agent contacted the tenant's next of kin, who picked up their personal effects and returned the keys, but what followed was an administrative nightmare, which, Stephen says, was both stressful and upsetting for all involved.

"My agents said, once the keys were returned, I should go ahead with plans to refurbish the property, but I was concerned about the legalities of that.

**"We all have legal rights and when someone dies there are legal procedures to follow"**

"We all have legal rights and when someone dies there are legal procedures to follow."

What he discovered was a legal minefield.

"I was keen to do the right thing, but there was so much conflicting information out there, it was almost impossible to know what the correct procedure was.

"In the end, I got in touch with solicitors dealing with the estate and had to serve

a Section 21 notice – despite the circumstances – in order to generate the paperwork to take back possession of the property.

"Obviously, all this took time and it would have been so much simpler for everyone involved if there was a clear process to follow in circumstances such as these."

### WHAT TO DO SHOULD THE WORST HAPPEN

In response to Stephen's situation, the NRLA has developed a new guide for landlords on what to do on the death of their tenant.

First, the technical part. Tenancies are a form of

legal interest in land, much in the same way someone owns their home. When the tenant passes away, that interest does not disappear. Instead, it forms part of the deceased's estate.

The next steps will differ dependent on what, if any, arrangements a tenant had made regarding their passing, such as a will.

### JOINT TENANCIES

Joint tenancies, where two or more people are listed on the agreement, are the simplest to manage, as the tenancy simply moves to the remaining tenant or tenants, and the tenancy continues under the same terms.

### WITH A WILL

#### ● Individual tenants with a partner

If the deceased tenant's spouse, civil partner or cohabitee was living with them at the time, even if they were not included on the tenancy agreement, they will inherit the tenancy.

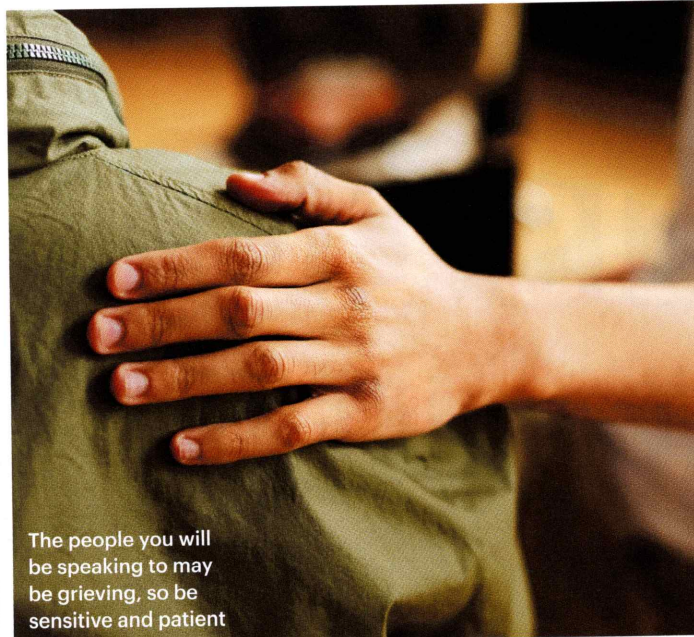
This is known as a succession to the tenancy.

Practically, this will be similar to a joint tenancy.

If the partner chooses to stay, you can formalise this with a new tenancy agreement.

#### ● If the resident is not the tenant's partner

In this situation you should only deal with the named executors of the will. This can be a little more complicated as the estate would need to continue to pay rent for the other person to remain there.



The people you will be speaking to may be grieving, so be sensitive and patient

If the estate doesn't want to do this, they would need to speak to the remaining tenant about surrendering the tenancy – and serve them notice if they can't come to an agreement.

#### ● Lone tenants

Should a lone tenant die leaving a will, the remaining term of the tenancy passes to the tenant's estate and will be dealt with by the executors of the will.

We would advise you, in the first instance, to try to arrange a surrender with them directly. It will usually suit all parties to bring about the end of the tenancy as quickly as possible, after allowing for the deceased's belongings to be collected.

You should allow time for this. The executors will usually be grieving and may need some time before collecting these belongings and ending the tenancy.

Once the surrender has been agreed, this should be drawn

up as a deed to ensure it is enforceable, with a template available on the NRLA website at [nrla.org.uk/deed-surrender](http://nrla.org.uk/deed-surrender)

If this isn't possible, you can bring the tenancy to an end (at present) by serving a Section 21 notice or you can use Ground 7 under a Section 8 notice.

When serving a notice, it should be addressed to "The personal representative of [the deceased's name] of [last known address of the deceased]." This is important as a notice cannot be served upon someone who has died.

### WITHOUT A WILL

In this case the situation will be resolved through the legal process of intestacy, where the estate is held by a public trustee.

In these circumstances, notice needs to be served on the public trustee as well as to the tenant's personal representative. As above, it should be addressed to "The personal representative of [the deceased's name] of [last known address of the deceased]."

Immediate family members are most commonly the ones to take on this responsibility

## Once the surrender has been agreed, this should be drawn up as a deed

and you might already have contact details for them.

An additional copy will also need to be sent to the public trustee via the online NL1 form, which can be accessed via the [gov.uk](http://gov.uk) website.

Where there are known relatives to contact but they are not technically registered as a personal representative of the tenant and don't have probate, you may choose to negotiate with them to arrange a surrender.

However, this approach comes with risk. A beneficiary of the estate may later make a claim against the tenancy as something they should have had a chance to benefit from.

Ideally, this should be avoided, and you should seek to negotiate with the personal representative of the tenant instead.

### THINGS TO CONSIDER

Remember that the people you will be talking to in all of these scenarios will be grieving and it is important you give them time and space to move forward with the processes outlined. If the tenant were the main breadwinner, they may also be facing financial hardship, so bear this in mind.

The NRLA landlord support team is on hand six days a week should you need additional advice in this area.

● For more detailed guidance, visit [nrla.org.uk/death-of-tenant](http://nrla.org.uk/death-of-tenant)

It will usually suit all parties to bring about the end of the tenancy as quickly as possible