

Deceased Tenant

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While an heir would typically constitute a great guess, there's always some chance that you could pick the wrong heir, pick someone who was disinherited, or find out later that a personal representative was appointed without your knowledge. Until the ORLTA provides guidance on this issue, you just have to proceed as cautiously as possible.

SCENARIO TWO:

Now, let's say that you had two or three tenants living in one apartment or house, and only one tenant dies. This factual twist instantly modifies one of your rights: You can no longer change the locks and take possession of the premises. (If you tried to do so, you would be unlawfully ousting the remaining tenants.) It also clouds your obligations vis-a-vis the deceased tenant's personal property. If you can identify the deceased tenant's personal property, all the same rules stated in scenario one apply here. However, if there is an intertenant dispute over who owns the personal property, you may find yourself in a statutory no-man's land: It may be impossible to take possession of, and/or allow the retrieval of, personal property that the surviving tenant's credibly claim as their own. In such cases, you simply have to do the best you can to comply with the abandoned property statute.

Once you determine what to do about the personal property, you still have to determine what to do with any security deposit the deceased tenant may have paid. If you do have such a deposit, and the remaining tenants stay on as your tenants, then any withholding or refund would be premature. So long as you're using an ORHA rental agreement, the final accounting need not be refunded or withheld, and no final accounting need be delivered, until the last of the original tenants vacates the premises. (Note: some attorneys and judges may dispute this assertion, so get good legal advice if you run into a similar scenario.)

TIMELINES

Just because a tenant passed away, the timelines described in the abandoned property and final accounting statutes don't change from those applicable to tenants who leave your premises alive and well. And, aside from the handful of special rules described above, the contents of an abandoned property notice or final accounting likewise remain the same as those provided to living persons. Want to take all of the guesswork out of the contents? Just grab the latest ORHA form and you'll be in great shape! Again, bear in mind that any mailed aban-

doned property notice must provide the recipient eight days within which to contact you, and you must then provide the recipient another fifteen days (from the date they actually contact you in order to request an opportunity to retrieve the personal property) to pick up the personal property. During this entire time frame, the property must be stored in a place of safekeeping; you must cooperate in allowing for the removal of the personal property; and you must make the property available for removal by appointment at reasonable times. Note that you need not store things like rotting food during this time period (chuck it in the trash), and you can have your local animal control agency take possession of any abandoned animals.

WHAT IF THERE'S NO HEIRS?

You'll note that Department of State Lands ("DSL") will be entitled to receive an Abandoned Property Notice. The DSL is great at inventorying personal property, deciding what to do with it, and providing you protection whenever you follow DSL's instructions. However, that still leaves the question whether DSL is entitled to a security deposit refund or final accounting. The answer is: Maybe. Again, the ORLTA hasn't yet answered this question, so you'll need further legal advice before deciding how to proceed.

TWIST AND TURNS

The foregoing comments constitute a primer, but not a complete analysis, of the issues arising when tenants pass away. In some instances, you may find yourself left with personal property and a decision whether to sell or destroy it. In some instances, competing claimants will demand that you release personal property to different individuals. This is where a good knowledge of the basic rules will help you avoid costly mistakes, and solid legal advice can set you on the least risky path. Alas, if you've ever attended one of my lectures in the past, you've already learned the one rule that will safeguard you from tenant's claims: "First, don't screw up, then figure out the right thing to do." Once you absorb the guidelines set forth in this article, you'll be well on your way to following this rule and complying with the statutes.

ABOUT THE AUTHOR

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