

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

May, 2012

“There’s A Dead Guy in My Suite!”: How to Deal with a Deceased Tenant

In the last month, two landlords have called me to say, "Help, one of my tenants died, what do I do?!" Fortunately, neither tenant was a hermit that died on the second of the month just after paying rent only to be discovered 30 days later!

In one case, the tenant was discovered by his mother on a visit to the suite. Mom called our investor. In the second case, the tenant who normally paid his rent like clockwork missed a payment. A call to the emergency number on the tenant application (see, that's why you have emergency numbers) revealed that the tenant had passed away while visiting relatives.

For both landlords/investors, their question was, "now what?" "I want to re-rent the suite, but what do I do with all the tenant's possessions?"

Legally speaking, when someone dies, his or her [“estate” is now dealt with according to the deceased’s Will](#)—or lack thereof. Their executor, if they have a Will, or administrator, if they don't have a Will, (for this Tale let's just call the person in charge the executor) steps into the deceased person's shoes. It is as if the executor is the deceased person. They have complete authority to deal with all the deceased's issues.

So, that's great if you can locate the executor. And, when I say executor I mean the executor recognized by our courts because they are named in a Will or through what is known as a Grant of Administration where there is not a Will. The process of getting official court authority is lengthy and complicated. For a landlord who wants to deal with an empty suite and get it re-rented all in one month, it is highly unlikely that there will be any official executor to deal with.

From a very practical perspective and on a compressed timeline for re-rental, if there is no one in an official capacity, whom do you deal with? What you do with the security deposit? What is your liability if you allow someone to remove all of the tenant's possessions, but it turns out it's the wrong person?

Every situation will be different and must be analyzed on an individual basis. The absolute safe way to do it is to take extensive photos and video of the suite. Next, you remove everything from the suite and store it securely. Then, you wait to hear from the official executor making sure to get a certified copy of what's known as the Grant of Probate (or Grant of Administration where there is no Will) that confirms them as the official executor. On receipt of that official Grant of Probate, you can release all of the tenant's property including security deposit to the executor. Now you're done and you can re-rent the suite.

That's super safe but, generally, completely impractical as going through that official court process can take six months or more. And, sometimes estates are of such little value that there is no point in obtaining a Grant of Probate and so no one is ever officially in charge of the deceased tenant's estate.

I think your practical answer is twofold.

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Firstly, you can take the position that the tenant has abandoned the property.

This approach could be useful if the estate still has value and you need to watch your liability. In Alberta, you would then deal with anything left in the suite under the Abandoned Goods section of the [Residential Tenancies Act](#). This allows quick action under an official framework. If the tenant has next of kin who say they are in charge and who appear to be helpful, using the abandoned goods approach is a bit harsh but it most likely protects you from any allegation that you dealt improperly with the tenant's possessions. Of course, if during the abandoned goods process anyone shows up with an official Grant of Probate, then you should deal with him or her.

Secondly, you take the position that the next of kin have responsibility.

This works best if the tenant appears to have low-value personal possessions in the suite. You would need to discuss the tenant's situation with the next of kin who say they will deal with the tenant's possessions. Allowing such a person to remove everything from the suite is most likely not going to bring future claims against you.

Again, before you let anything be taken out of the suite, take extensive photos and video. Get next of kin who want to take charge of the tenant's possessions to sign something identifying themselves and promising to deal appropriately with the tenant's possessions and security deposit.

As far as security deposits go, I might even hold onto that for another 30-90 days after you give up possessions just to see if anything official turns up. Money responsibility is different than dealing with low/no value tenant possessions.

Lessons Learned:

1. This Tale deals with the simplest of situations. These matters are often more complicated. If a dead tenant shows up for you, consult your lawyer IMMEDIATELY!
2. Your best bet is to deal with someone who has a Grant of Probate or Grant of Administration. Then, you are completely off the hook.
3. Without a Grant, do your best to ascertain next of kin. Take extensive photo and video documentation before cleaning out the suite or giving possessions to next of kin.

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